THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

HOLDEN AT FORT PORTAL

CIVIL SUIT NO.15 0F 1990

1. JACK BUSINGYE
2. JAMES BAHEMUKA::PLAINTIFFS
3. **FRED BUTAMANYA**

VERSUS

T.M.K::DEFENDANT

BEFORE: - THE HONOURABLE MR. JUSTICE I. MUKANZA

JUDGEMENT

The plaintiffs in this case jointly filed an action against the defendant company claiming for general and special damages plus costs and interest arising from damage caused to the plaintiffs forests when a vehicle carrying fuel driven by the defendant's servant/employee overturned and caught fire spreading to the plaintiffs' trees.

According to the plaint, on or about the 24th day of July 1990 the defendant's motor vehicle registration NO. KVO 325B with semi trailer registration No, KVO 418B which was being driven by the defendants employee one Hamisi Bigirimana in ordinary course of employment had an accident whereby it overturned at Rutoto Bunyaruguru, Bushenyi District or Mbarara Kasese Road.

As a result of the said accident, the said motor vehicle which was loaded with petrol exploded into high flames and caught fire which caught the neighboring bush and spread far and wide on both sides of the road eventually destroying the first plaintiffs 5 hectares of trees, the second

plaintiff's 1 hectares of trees and the third plaintiff's 11/2 hectares of trees that were in the neighborhood.

It was alleged in the plaint that the cause of the accident wasdue to the negligence of the defendant's servant for which the defendant was vicariously liable in that he was driving at high speed on a dangerous piece of the road. He failed to control the Vehicle so as to avoid the accident and that he was driving a vehicle with highly inflammable substance without any gadgets to control the spread of fire in the case of accident.

The value of the plaintiffs' trees that were destroyed by the said fire as assessed by the forest officer was as follows:-

(a) First plaintiff Shillings thirty nine million (shillings 39,000,000/=).

(b) Second plaintiff Shillings seven million eight hundred thousand (Shillings 7,800,000/=).

(c) Third plaintiff Shillings eleven million seven hundred thousand (Shillings 11,700,000/=).

Total claim is Shillings 58,560,000/=

In its written Statement of Defence the defendant company denied each and every allegation contained in the plaint and made against it. They contended that although its truck registration No. KVO 325B/KVO 418B fell and caught fire at Rutoto Bunyaruguru it was not because of the negligence of its driver but an act of God. The fire which broke out only burnt their truck and nothing else. The fire from the said truck did not occasion any loss or damage to the plaintiffs' trees or any person's tree or property at all. The defendants shall produce photographs to prove this.

If the plaintiff trees were destroyed by fire which was not admitted the fire had no connection whatsoever with the fire that burnt the defendants truck. The defendant would produce evidence to show that the fire which burnt the truck was not the fire that burnt the plaintiffs' trees that was if the plaintiffs owed any such trees at all.

In the alternative but without prejudice to the foregoing the defendant averred that the plaintiffs do not have any trees or at all. But that such trees belong to the Government and as such even If there was any damage done to the said trees which damage was denied to, the plaintiffs had no locus standi to bring the present suit against the defendant.

The facts of this case were simply as follows:—

The defendant is a Zairean registered Company carrying on business of transport through the Republic of Uganda and with a branch office in Kampala. On 24th July 1990, the defendants motor vehicle registration No. KVO 325B with semi trailer registration No. KVO 418B which was carrying petrol was being driven by defendants servant one Hamisi Bigirimana. The motor vehicle overturned at a place called Rutoto in Bunyaruguru Bushenyi District on Mbarara Kasese Road. As a result of the accident the petrol exploded into flames and caught fire catching the neighboring bush and spread on both sides of the road. It is alleged that the said fire destroyed the plaintiffs forest/trees and hence the filing of this action.

At the commencement of the trial of this case the following issues were flamed namely:—

(i) Whether the plaintiffs forests were burnt.

(ii) If yes did the fire originate from the defendants vehicle which overturned.

(iii) If yes was this overturn due to the negligence of the defendant's driver/servant.

(iv) If yes what is quantum of damages as a result of the loss by the accident.

As regarded the evidence as adduced in court;

There was evidence from PW1 to he effect that he owned a forest at Rutoto to the tune of 20 hectares. His forest comprised of Cyprus, pines and eucalyptus trees exhibit P.1. On the date when this forest got burnt he was away. He came to the site at around 4.00 PM and found flames originating from the burnt vehicle had spread into both sides. The fire passed through the nearest grown up forest and spread and destroyed his forest down the hill. He reported the matter to PW5 Mwesige a Police Officer in Rutoto Police Post.

Whereas PW5 and PW7 who were both Police Officers on information received proceeded to the site where a tanker had over turned and caught fire. They could not reach the place and no vehicle could pass. The fire *was* coming from the vehicle which had caught fire and was burning on both sides of the road. The fire spread to the forests PW5 witnessed this. The fire spread to the front which was a slope, petrol ignited spreading to all sides of the road. PW5 reiterated that it was a dry season and rough at the scene when the fire subsided he interviewed the driver. Meanwhile PW1, PW3 complained to him that the fire had destroyed their forests. Butamanya PW3 whose forest was about 200 meters away from the site showed them the burnt forest. PW7 as stated earlier was together with PW5. Him and PW5 were Police Officers. His testimony was almost similar to that of PW5. They stayed at the scene commanding vehicles for sometime. After three days he received a report from Bahemuka PW2 that his forest had been burnt. He entered the report in the Station diary after which he referred him to the forest officer.

Besides PW1, PW5 and PW7 there were still eye witnesses who saw the forests in question get burnt, Barnabas Mamwegisha Chairman RC1, PW6 of Ikombe 1 where the accident happened testified that he knew PW1, PW2 and PW3. While at his home he had an explosion of a vehicle having overturned. It fell at Ikombe 1 and his home was just half a mile from where the vehicle overturned. He went there. Fire spread over the whole hill and spread on both sides of the road. It destroyed forests PW1, PW2 and PW3. He saw the fire physically and went near vehicle which had been burnt beyond recognition. PW2 and PW3 went to him and he made a report to the RCII Chairman and also made a report to the Police. In his evidence Twinomujuni Edison a PW8 testified that PW2 was his father. On 24th July, 1990 at about 2.00 p.m. he was at his home when he heard an explosion. He went there and he saw some fire burning. The fire originated from the vehicle which got burnt. His home was half a mile from the scene. After the explosion and after a short time fire spread to their trees (PW8 and PW2 trees). The fire burn, their eucalyptus trees. At that time they could not stop the fire and his father PW2 was in Kampala. When the latter returned he reported the matter to him. That the size of the forest that was burnt was about an hectare the whole of their forest was burnt. Other forests burnt was that of Frederick Butamanya PW3 and that of the Government which was on the right hand side as one comes from Ishaka Bushenyi (PW1's forest).

PW2 and PW3 were not around when their forests got burnt. PW2 has a forest on his land of which he had a lease offer. He had planted the trees in 1972 but the forest was planted 2 year back. He planted in 1984 and had eucalyptus trees. On 25th July 1990 he was Coming from Kampala and his son PW8 told him that his forest had been burnt. He had planted 21/2 hectares. The forest Officer who inspected the forest found that one hectares of his forest had been burnt. His forest boarders that of PW3.

On the other hand Butamanya PW3 testified that he had a banana plantation, forest, sugarcane plantation and pineapple on his land of which he had a title exhibit P.3. He bought the place in 1974. He found there a small forest of eucalyptus trees and 1990 he planted more of eucalyptus trees. On 26th July, 1990 he returned after nursing his father in Kasheshero Hospital. PW6 Chairman RC1 reported to him that his forest had been burnt. He reported to the forest Officer who went and assessed the damage caused to his forest by the fire. The forest Officer assessed the damage to his forest at one and half hectares. Behemuka's (PW2's) forest was nearest to the site where the vehicle overturned.

PW4 Kataiguta was an Assistant forest Officer. He has a certificate and Diploma in forestry. He knew PW1 as a man who had been permitted to plant forests in the area. PW1 reported to him that his forest had been burnt. He had Cyprus pines and eucalyptus trees. After his report he went there to assess the damage. He went there on 27th July, 1990 and he was with the Police Officer. At the time of the incident Jack (PW1) had planted 20 hectares. It was 1500 trees in 5 hectares that had been burnt. He visited the forest near the road which got burnt first and fire extended down ward. The fire passed underneath the trees nearest the road and if one went beyond there was a big area which was burnt. He assessed trees beyond the big forest and most of the trees burnt were eucalyptus trees. He made a report which he produced in Court as exhibit P.4.

PW9 Muragwa Nicolas as a forest Ranger in Bushenyi District in-charge of Buhojo County. He has a certificate, in forestry. He received a report that Bahemuka (PW2's) and Bitamanya's (PW3's) forest had been burnt He visited their forests which boarded with Ishaka/Kasese Road. His findings were that Bahemuka's forest had been burnt. He counted about 1350 trees destroyed about one hectare. Whereas in Butamanya's forest about 2027 trees had been burnt/destroyed. He made reports which he tendered in court as exhibit P.6 and P.7 respectively.

For the defence Katemba Martin DW1 was a driver by profession. He was in-charge of the drivers of the defendants company. On 24th July, 1990 he was in Zaire. While there he got information that one of the vehicles belonging to the defendants company had an accident. He came to the site on 25th July, 1990. He started taking photographs. The purpose of taking photographs was to go and satisfy his Boss in Zaire so that he could get assistance to go and remove the vehicle from the scene. He took 2 photographs. One was marked No.3 and was exhibited as Exhibit D.1. The other was marked No. 5 and was exhibited as exhibit D.2. In the third photograph he stood near the vehicle and the same was taken by a friend as exhibit P.8. His testimony went on to show that where the vehicle fell the stones were burnt because the vehicle fell on the side of the road and not the middle. As one comes from Ishaka to Kasese across the road that is where the accident happened. He did not see any burnt trees because they were very far away from the scene. He passed at the scene almost daily when going to Kampala and Nairobi. He collected the vehicle on 27th July, 1990. He was positive that the trailer had about 22,000 litres of fuel. He was not sure of the figure.

DW2 was Atakaijuka John a forest officer with a Bachelor of Science degree in Forestry. The testimony of this witness as an exparte concentrated more on the assessment of damages done to trees and whether those who assessed the damage to the forest were competent people. I will come to consider his testimony later on issue of quantum of damages but for the purpose of issue No importantly he testified that an extensive fire could burn an old tree so that it could not rejuvenate.

In his submission the learned counsel appearing for the plaintiffs submitted that the evidence as regarded the burning of the forests was uncontradicted and as such unchallenged.

In his lengthy submission the learned counsel appearing for he Defendant Company submitted that PW1 did not give the proportions of his trees in the forest that here was a mixed forest comprising pieces of eucalyptus trees and Cyprus trees. PWI was not around when the fire started. He came at 5.00 p.m. and found the fire still burning. That according to the assessment 5.00 p.m. and found the fire still burning. That according to the assessment *5* hectares were burnt which PW4 assessed at 39 million Shillings. That the place was bushy and fire spread on both sides of the road but shown the photos taken on 25th July, 1990 on the following day after the

accident the witness said the forest which got burnt was not the one nearest the road but some distance on top of the hill. After that he found overwhelming contradictions of PW1's evidence when he talked of dry season and that both sides of the road got burnt and fires spread through the dry grass burnt it and spread to the forest. He continued to submit that when confronted with the photographs at the locus in quo PW1 stated that the forest near the road did not get burnt. He submitted that photographs were taken on the following day. The grass on the side of the road where the truck got burnt and the grass on the opposite side both looked green PW1 further stated the fire to go on the opposite side of the road and burn his trees passed through the forest nearest the road but the counsel contended that the exhibits showed the place green. PW1's forest was never burnt. Consequently PW2 and PW3's forest were also never burnt since by PW1's evidence that the grass and forest which were the road remained green. Then PW2 and PW3's forest which were a distance from the spot of the accident could not have been burnt. He continued to submit that when confronted with the defence exhibit showing green grass and green forest at the spot of the accident on 25th July, 1990 the witness wanted the honourable Court to believe that the fuel instead of flowing down it ascended and that is why the parts shown in the photograph were not affected. The fire spread and went to burn the forest on top of the hill. He submitted that the evidence was framed to meet the impossible. PW1 only wanted to take advantage of the defendant's lorry having had an accident near his forest and fraudulently make money.

That comparing what the witness said in Court here and what he said at the locus in quo and studying the defendants exhibits which were not denied having been taken at the accident and what was observed at the locus in quo PW1's evidence of burning forest should not be believed. It was the kind of evidence which necessitated the fire exparte to give evidence so that such witness should explain how possible it was for fire to fail to burn the nearest to the spot of the origin at the fire and jump to some distant place leaving in between an unburnt spot. That the plaintiffs' side did not assist the Honourable Court and yet it was their burden to prove the allegation.

That PW2 failed to explain how some of the forest on the scene did not get burnt. That it was at the locus in quo that the witness remembered to say that one hectare out of 11/2 hectares was burnt. At the court there was no such evidence. That PW2's evidence was concocted like that of

PW1. He submitted that the court should not believe this witness about the stamps. His forest was never burnt. That PW3's evidence should be given the sale treatment. PW3 was not present but was told by his wife Jane that his forest had been burnt. That evidence of PW1, PW2 and PW3 was just fictitious. It was contended and became so mechanical and ridiculous. And from the analyzed evidence the witnesses were left no room to exercise their own reasoning and give believable evidence.

I now proceed to consider the first issue. The evidence of PW1 showed that he came to the site around 4.00p.m from his safari and found that his forest was on fire. He reported to PW3 P.C. Masige who had already been to the scene and confirmed that fire from the motor vehicle had spread to the forests. PW4 an Assistant Forest officer confirmed that PW1's forest was burnt which he later assessed.

PW2 was not around when his forest caught fire and got burnt but his son PW8 who was at home when the accident occurred witnessed the incident and reported to his father PW2 about that had happened. Also PW3 was not around when his forest caught fire and got burnt. It was hearsay evidence when his wife Jane reported to him that his forest got burnt because the former was never called as a witness. PW3 however reported the incident to the RC1 Chairman of the area who had witnessed the accident. They later heard the explosion of the motor vehicle which had over tuned. He went to the site. He saw the tanker, which had over— turned and witnessed fire from the vehicle which spread and burnt the forests of PW2 and PW3. At the locus in quo we were shown the homes of PW6 and PW8 which were very near the scene. There was also the evidence of 2 policemen PW5 and PW7 from Rutoto Police Post who came to the scene almost immediately and saw the fire from the vehicle which had overturned spread to both sides of the road and, burned down the forests later. They received reports from PW1 and PW2 that their forests had been burnt.

In his submission the learned counsel appearing for the defence blamed PW1 for failing to give the proportions of his trees in the forest. May be the learned counsel meant the number of those trees in the 20 hectares i.e. the Cyprus, the pine and eucalyptus trees. I do not think this was necessary because PW1 called PW4 a forest officer an expert on trees who informed this Court that about 5 hectares out of 20 hectares of forests belonging to PW1 had been burnt.

The learned counsel complained again that according to the photographs exhibits D.1 and D.2 that the grass and forest which were nearest the road remained green and therefore fire never spread and burnt the plaintiffs' forests. This court visited the locus in quo and saw the positioning of the motor vehicle which overturned and caught fire. The vehicle leant on the left hand side of Ishaka/Kasese Road. The area was a slope and I was in full agreement with PW2, PW3, PW1, PW5, PW7 and Pw8 that if the vehicle which overturned spilt fuel and the same caught fire, fire would very easily spread on to the adjourning grass looking at the nature of the vegetation around the said fire would very easily spread to PW2's and PW3's forest which lay on the left hand side on the same side a was the vehicle.

With regard to fire spreading to PW1's forest which was on he opposite side. The court viewed the old forest belonging to PW1 which was nearest the road. PW1 testified that because of the dry grass fire spread to the opposite side of the road burnt the old trees nearest the road by passing underneath and spread on top of the hill and burnt his five 5 hectares of the trees below. The court observed that the old trees in the forest near the road had black spots on them at the bottom. This in my opinion was indicative of the fact that they had been burnt by fire. The court was however willing to ascend the hill and have a glance at the burnt 5 hectares of PW1's trees but the learned defence counsel dismissed the idea. I am of the view that he abandoned the idea because of being satisfied that there was over whelming evidence which showed that the fire which burnt PW1's forest emanated from the defendants vehicle which had overturned passed underneath the old forest and spread to the forest above. The court did not climb the hill to go and look at the forest of PW2 and PW3 which had been destroyed. When the idea was suggested it received a cool reception. The court was however shown the two forests and I had no doubt in my mind that the parties and counsels were satisfied with what we observed at the locus in quo that the fire from the defendants vehicle spread and burnt down PW2 and PW3's forest.

Be that as it may I do not agree with the submissions of the learned counsel for the defence that PW1's evidence was framed to meet the impossible and only vented to take advantage of the lorry which had an accident near his forest and fraudulently make money. Besides PW1, PW5 and PW7 Police Officer saw fire spread on both sides of the road and the same burnt some forests. PW6 and PW8 testified that the forest of PW2 and PW3 caught fire. Infact PW6 testified that the plaintiffs' forests were burnt. Whereas PW8 testified that fire also spread and destroyed

Government forest (PW1's forest). The learned counsel submitted that comparing what the witnesses testified in court and at the locus in quo and also looking at the defendant's exhibit the evidence of burning the forests should not be believed. That it was the kind of evidence which necessitated the fire expert to give evidence so that such witness should explain how possible it was for a fire to fail to burn the nearest forest and jump to some distant place leaving in between unburnt spots that the plaintiffs did not assist the court and it was their burden to prove the allegation.

It is the considered opinion of this court that since the learned counsel was affirmative that fire originating from the vehicle which had overturned never spread and burnt the plaintiffs forests the burden lay on him to prove his assertion and not on the plaintiffs by calling the fire experts as a witness. In addition I do not agree with Mr. Bwerisonaho that PW2's evidence was concocted with that of PW1 and that even PW3's evidence should be given similar treatment. I saw and watched these witnesses on both at the locus in quo and in court and held the impression that they told this court the truth. There could have been contradictions and discrepancies in the plaintiffs' case and in the testimonies of witnesses called by them but these contradictions were minor and did not lead to deliberate untruthfulness. See **Tajan case E.A. [1969]** unreported. The defence failed to adduce evidence to show that the plaintiffs' forests were never burnt. The photographs exhibits D.1 and D.2 were not in themselves conclusive to show that the fire from the vehicle never spread to the plaintiffs forests in the light of the evidence on record. The first issue therefore is in the affirmative.

The second issue was did the fire originate from the defendants vehicle. In his Written Statement of Defence the defendant company pleaded that the fire that burnt the defendant's truck had no connection whatsoever with the fire that burnt the plaintiffs' forests. Then Berwanaho there called DW1 to produce evidence of 2 photographs Exh. D.1 and Exh. D.2 of the burnt vehicle and the surroundings. It was unfortunate however that the driver of the vehicle and probably the tunboy were not available to show to the court how the vehicle overturned. However DW1, testified that he took the photographs so that he would convince his bosses in Zaire to give him assistance to come and remove the vehicle from the site. The photographs as I saw them were not conclusive evidence to show that fire never spread from the spot the tanker fell. There was infact cogent evidence from PW1, PW5, PW6, PW7 and PW8 to show that the vehicle overturned and

the petrol which was super and highly inflammable exploded caught fire which spread on both sides of the road and burnt the plaintiffs forests. Infact DW1 testified that the vehicle was carrying about 22,000 litres of petrol. It is therefore the considered opinion of this court that the fire which destroyed the plaintiffs' forests originated from the defendants vehicle. The second issue therefore like the first issue is also in the affirmative.

The third issue was whether the overturn of the vehicle was due to the negligence of the defendant's driver/servant.

In the pleadings the plaintiffs' alleged that the cause of the accident was due to the sole negligence of the defendants servant for which the defendant was vicariously liable in that he was driving at a high speed on a dangerous piece of the road and that he failed to control the vehicle so as to avoid the accident and that he was driving a vehicle with highly inflammable substance without any gadgets to control the spread of fire.

In its Written Statement of Defence the defendant company averred that even if their truck fell and caught fire it was not because of the negligence of their driver but because of an act of God. I do agree for the moment with the submissions of the learned counsel appearing for the defence that no evidence was adduced by the plaintiffs that the driving was driving at a high speed on a dangerous road and he failed to control the vehicle and avoid accident. Similarly the defendant did not adduce evidence to explain how the accident came about say for instance where they claimed that the accident was due to an act of God.

However to establish negligence on the part of the defendants driver the plaintiffs relied on the doctrine of re ipsa loquitor. The learned counsel appearing for the plaintiffs submitted on this at length and referred me to a number of authorities Mr. Berwenaho on the other hand submitted that the doctrine was not applicable because it was not referred to in the pleadings. He referred me also to some authorities.

I now turn to look at some of the authorities on this doctrine/maxim of Res ipsa loquitor Clerk and Lindsell on Torts fourteenth Edition page 396 paragraph *975* had this to say about the doctrine of res ipsa loquitar.

"The onus of proof which lies on a party alleging negligence is as pointed out that he should establish his case by a preponderance of probabilities. This will normally have to do by proving that the other party acted carelessly, such evidence is not always forth coming. It is possible however in certain cases for him to rely on the mere fact that something happened as affording prima facie evidence of want of due care on the other party., "Res ipsa loquitar, is a principle which helps him to do so". In effect therefore on it is a confession of reliance importance by the plaintiff i.e. that he has no affirmative evidence of negligence. The classic statement of the cirumstances in which he is liable is by Erle J. Sctoth Vs London st Katherine docks 186. 3 Hrc 6O1. There must be reasonable evidence of negligence, but where the thing is shown to be under the management of the defendant or his servants, and the accident is such as in the ordinary course of things does not happed if those who have the management use proper care it affords reasonable evidence, in the absence of explanation by the defendants, that the accident arose from want of care. It is no more than a rule of evidence and states no principle of law. "This convenient and succinct formula said Morris LJ" possesses no magic qualities nor has it any added virtue, other than that of brevity merely because it is expressed in Latin. It is only a convenient based to apply to a set of circumstances in which a plaintiff proves a case so a to call for rebuttal from the defendant without having to allege and prove any specific act or commission on the part of the defendant. He merely proves a result, not in any particular act or omission producing the result. If the result in the circumstances in which he proves it, makes it more probable than not that it was caused by negligence of the defendant, the doctrine res ipsa loquitor is said to apply and the plaintiff will be entitled to succeed unless the defendant by evidence results the probability."

In other cases as would be shown below before the rule of res ipsa loquitor can be applied the following three conditions must be fulfilled.

(i) The thing inflicting the damages must have been under the sole control and management of the defendant or some one for whom he is responsible or he has a right to control.

(ii) The occurrence is such that it could not have happened without negligence.

(iii) And there is no evidence or explanation as to how or why the occurrence took place otherwise the defendants evidence negligence would have to he determined.

See **Alen Byarugaba Vs. Kilembe Mines Limited High Court CCS. No. 945/71 Roy Nanziri anti Engulansi Nankya Vs. Joseph Kambere [1978] HCB P. *304.***

In Habibu Kizito and three others Vs. Edward Boswa *[1979]* HCB Page 101 the plaintiffs claimed damages against the defendants motor vehicle. The defendants who offered no evidence at the tril merely relied on his Written Statement of Defence in which he made a general denial of the plaintiffs claim. The evidence adduced did not establish the cause of the accident but it was quite obvious that the vehicle in question overturned causing the alleged injuries. The defendant offered no evidence on his part to explain how the vehicle overturned. It was held that in the absence of evidence establishing the cause of the accident and in the face of the fact that the vehicle overturned, it would be in the circumstances be proper to invoke and apply the doctrine of Res ipsa loquitor to the case for the simple reason that the fact of the vehicle overturning on a high way raised a presumption of negligence on the part of the driver since in any case, vehicles did not normally overturn when driven with due care and attention. Also see Senyonga Benard Vs. Uganda Transport Co-operation [1980] HCB Page 128 where the doctrine of re ipsa loquitor was successfully relied on by the plaintiff in an action for negligence brought against the defendant even if the same had not been pleaded by the plaintiff. For further authorities on this topic see Embu Road Services Vs. Riimi [1968] E.A. page 22, Msuri Muhiddini Vs. Nazzarbin Seing [1960] E.A. Page 201, Barkway Vs. South Wales Transport Limited [1960] page 392. Also see Mukasa Vs. Singh and others [1969] E.A. Page 442 where it was held that particulars of negligence must be pleaded before the doctrine applies.

In the instant case the motor vehicle had been under the sole control and management of the driver/servant of whom the defendant company was responsible. The occurrence of this accident was such that it could not have happened without negligence and there is no evidence or explanation as to how or why the motor vehicle overturned. In the premises as there was no explanation from the defendant as to the cause of accident and in view of the authorities quoted above it is the considered opinion of the court that the doctrine of res ipsa loquitor would apply to the instant case and negligence would therefore be taken to have been established even though res ipsa loquitor was not pleaded. Because in any case motor vehicle loaded with fuel and Driven with due care and attention would not ordinarily overturn.

From what has been explained above the third issue is in the affirmative. This now brings me to the fourth and last issue in this case the quantum of damages. It must be recalled that all the plaintiffs have claimed special damages as a result of the damages done to their respective forests caused by fire which spread from the defendants' vehicle which overturned. There is authority to the effect that special damages can only he awarded where they have been strictly proved by the plaintiff see **William Kajumbula Nadiope Vs. Daudi Mwebe *[1939] E.A.C.A.* Page 6 about special damages. See also Musa Hassan Vs. Hunt *[1964]* E.A. Page 201, KCC Vs Nakeye [1972] E.A. Page *446.*** PW4 testified that *5* out of 20 hectares of PW1's forest comprising 1,500 trees were burnt by fire. He assessed the damage at 39 million Shillings and laboured to explain how he arrived at that figure. The number of trees 1 *.500* X the volume per tree and the cost per cubic metre was Shillings 2,600/=, *5* X 1,500 X 2 X 2,600/=. His assessment was reduced in writing and was exhibited in Court *as* Exhibit P.4. PW4 was as Assistant Forest Officer had got the certificate and the Diploma in forestry.

PW9 assessed the damage done to the forests of PW2 and PW3. He is a forest ranger in charge of the County where the accident occurred. His duties entail looking after natural forest, also supervising the Planting of eucalyptus trees in Bushenyi District. He also looks after workers. He compiles monthly reports and supervise sawyers, when Bahemuka PW2 reported to him that the forest had been burnt he went there. He found that one hectare of the forest had been burnt comprising 1,350 eucalyptus trees destroyed. He testified that eucalyptus trees were counted in class 2 and the value was 2,600/ per cubic metre. He assessed the damage at Shillings 7,800,000/= and made a report exhibit p.6. Similarly he assessed the damage done to PW3's forest. The later had about 2 hectares of trees before. He found that fire had destroyed about 1 hectare. Using similar methods of assessment as that applied in assessing damage to PW2's forest the damage done to PW3's forest was assessed at Shs.11,700,000/= and he made the damage report exhibit P.7.

On the quantum of damage the learned counsel representing the defendant company submitted that plaintiffs were relying on PW4 and PW9. He disagreed with PW4's professional evaluation because he informed the court that PW1's forest contained of three types of trees pine, Cyprus and eucalyptus trees burnt. The witness did not say what types of trees were in the five hectares and in what proportion. He submitted that PW4 just said what he wanted in court. With regard to

PW9 the learned counsel submitted that PW9 did pot also assist the court. He failed to understand how he made the assessment of PW3 forest who said the whole of his forest had got burnt. PW4 and PW9 failed to inform the court as to how old these trees were; as to what was the aim of planting the trees and as to how much a tree would fetch when it had reached its aim to which it was planted. He submitted that if PW4 and PW9 know all that the court would consider then that a forest Assistant and ranger were not in a position to give expert evidence. Mr. Bakuza on the other hand submitted that PW4 and PW9 were competent to make the assessment. PW4 was a diploma holder in Forestry whereas PW9 was a holder of a certificate in the same field. That the plaintiffs brought competent people and, they had as such proved their claim on a balance of probabilities. DW2 a graduate in forestry was called by the defendant. He explained the difference between artificial and natural forests. He continued that once one reports that an artificial forest had been burnt first of all one had to go at the site and assess the damage. Then one determines the age of the forest. The average size of each and every tree is not determined because the area might be large. Then they classify the trees. *Class* 1 *(one)* which is very expensive in terms of Value, class II which is medium and class III which is the lowest in value. Eucalyptus trees are in class I where as the Cyprus trees are in all class II and the pines in class III. DW2 then explained about the way assessment is done in case of damage done to trees in classes I to III. His assessment in my view corroborates the testimonies of PW4 and PW9 as regarded the assessment carried out by them. He explained that young trees could very easily be destroyed by fire whereas old trees could sustain the fire. He concluded that a station account is maintained by someone trained in forestry. This submission reflects a true account of the evidence as given in court. I endorse his submission.

However when cross examined by the learned counsel representing the plaintiffs, DW2 replied that the cadre of his department was that they had forest Ranger and then foresters and Forest Officer. The latter had degrees. That all those people are trained in forestry. From the testimonies of DW2, PW4 and PW9 I do not have the slightest doubt in my mind that PW4 and PW9 who are trained in forestry were competent people to carry out the assessment on the damage done to the forests of PW1, PW2 and PW3. Consequently PWI, PW2 and PW3 have been able to prove special damages as per exhibits p4, p6 and P.7. I do not agree with Mr. Berwanaho therefore that special damages have not been proved because pw4 and PW9 were not competent. As a result of

that finding, the plaintiffs have proved their claims on a balance of probabilities and I enter judgment in their favour as claimed by them. I also award them costs and interest at court rates from the date of the delivery of this judgment till payment in full.

As regards general damages, the award of this is entirely at the discretion of the court. In the plaint the plaintiffs prayed for its award but in court I was not addressed on this by the counsel representing the plaintiff nor did the plaintiffs canvass for it.

It would appear that the plaintiffs had abandoned their claims for general damages in the premises I decline to award anything on this item.

In a summary I enter judgment for the plaintiffs as follows:-
(a) The first plaintiff is awarded Shillings 39,000,000/= (Thirty nine Million Shillings) being special damages for his burnt *5* hectares at trees of his forest.

(b) The second plaintiff is awarded special damages of 7,800,000/= (Shillings Seven Million and eight hundred thousand) for his burnt one hectares of the trees.

(c) The third plaintiff is awarded special damages of Shillings 11,700,000/= (Eleven Million and Seven hundred thousand) for his burnt/destroyed trees forest of 11/2 hectares.

(d) The total award of special damages is to the tune of 58,560,000/= (Shillings Fifty Eight Million Five hundred and sixty thousand).

(e) The plaintiff are awarded costs of this suit plus interest at court rates from the date of judgment till payment in full.

I. MUKANZA
JUDGE
9/4/1992