

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

HIGH COURT CIVIL SUIT NO.768 OF 1998

JULIET NALWOGA ::: PLAINTIFF

VERSUS

1. BUZUBU CHARLES]

2. NSUBUGA RICHARD]::DEFENDANTS

3. KIBUKA GODFREY]

BEFORE: THE HONOURABLE MR. JUSTICE E.S. LUGAYIZI

JUDGMENT

The plaintiff filed an action for negligence against the defendants at the Chief Magistrate's Court of Mengo. She sought, among other things, remedies in respect of personal injuries that she sustained as a result of an accident involving two motor vehicles, that is to say, mini-buses registration Nos.767 UAV and 375 UBA. The defendants (who had been served with summons) did not enter appearance. As a result the plaintiff obtained an interlocutory judgment against them. However, subsequently the plaintiff made an application to this Court to have the suit transferred to the High Court and that application was granted on 1st March, 2000. Later on, the hearing of this suit began and the plaintiff called four witnesses in support of her case. They were, Nalwoga Juliet Kizito (PW1); Dr. Sebuliba (PW2); No. 26078 Corporal Bachwa Samuel (PW3); and Inspector Wakoli James (PW4)

In very brief terms those witnesses testified as follows; that on 31st March, 1997 Nalwoga (PW1) travelled as a fee paying passenger in a mini-bus registration No.767 UAV on Namirembe Road near Kampala. The mini-bus headed for the city centre. Before it reached the city centre it stopped along the way to enable some passengers to disembark. However, as it moved once

again, another mini-bus registration No.375 UBA came from the opposite direction. It was going up the hill and as it tried to overtake another vehicle it failed to do so. It swerved to its right hand side and collided with the mini-bus that carried Nalwoga. She was severely injured. She was rushed to Namirembe hospital and was given medical treatment for about 10 days. During that period she was operated upon. On discharge she continued to be unwell until now. She has a disability of between 15% to 20%. As a result of the accident, she also lost a semester that she had already paid for at Makerere University. In all, she prayed Court to grant her special and general damages for the injuries and the loss she suffered, interest, and costs of the suit. In deciding this suit, the following issues have to be resolved,

1. Whether there as an accident on Namirembe road that involved mini buses registration Nos. 767 UAV and 375 UBA on 31st March, 1997?
2. Whether the plaintiff was travelling as a passenger in any of those mini-buses and was injured as a result of the said accident on 31st March, 1997?
3. Whether the accident was caused by negligence on the part of any of the drivers of the said mini-buses?
4. Whether the defendants are liable? –
5. The available remedies.

Court will deal with those issues in the above order. With regard to the first issue, Nalwoga (PW1) testified that on 31st March, 1997 an accident occurred on Namirembe road between two mini-buses, namely, mini-buses registration Nos.767 UAV and 375 UBA. Her testimony was confirmed by No. 26078 Corporal Bachwa Samuel (PW3). This police officer visited the scene of the accident soon after it had occurred and took measurements. He then caused the said mini-buses to be taken to Old Kampala Police Station for further investigations. Nalwoga's evidence and Corporal Bachwa's evidence was not challenged by the defendants because they chose not to appear and defend themselves in this suit. Court therefore accepts it as the correct version of what took place on Namirembe Road on 31st March, 1997. For that reason, court is satisfied that the plaintiff proved its case on a balance of probabilities, that there was an accident on

Namirembe road that involved mini-buses registration Nos. 767 UAV and 375 UBA on 31st March, 1997. In the circumstances, the first issue has been answered in the affirmative.

With regard to the second issue, Nalwoga (PW1) testified that on 31st March, 1997 in the morning hours she travelled as a passenger in mini-bus registration No.767 UAV. That was along Namirembe Road. The said motor vehicle was heading for the city centre when it had an accident. She was severely injured as a result of the accident. She was later taken to Namirembe Hospital where she was admitted and treated for about 10 days. Nalwoga's hospitalization and the injuries she sustained were confirmed by Dr. Sebuliba (PW2) who gave her medical attention soon after the accident. All that evidence was not challenged by the defendants because they chose not to appear and defend themselves in this suit. Court therefore accepts it as the correct version in respect of what happened to the plaintiff on 31st March, 1997. For that reason, Court is satisfied that the plaintiff proved, on a balance of probabilities, that she was travelling as a passenger in mini-bus registration No.767 UAV and was injured as a result of an accident that involved the mini-bus in which she travelled and mini-bus registration No.375 UBA on 31st March, 1997. In the circumstances, the second issue has been answered in the affirmative.

With regard to the third issue, it is the plaintiff's case that the accident in question was solely caused by the negligence of the driver of the mini-bus registration No.375 UBA. Negligence as a tort is generally defined as "the breach of a legal duty to take care which results in damage to the plaintiff". (See **Winfield and Jolowicz on Tort Ninth Edition at page 45**). In paragraph 7 of the plaint, the plaintiff spelt out the following acts that she claimed amounted to acts of negligence on the defendants' driver's part,

“[i] Failure to keep a proper look out or at all for other road users.

[ii] Failure to take heed of other approaching vehicles.

[iii] Failure to slowdown, swerve or in any other way control the vehicle so as to avoid collision.

[iv] Overtaking other vehicle(s) without regard to other road users.

[v] Failure to keep to the left hand side of the road as the law provided.

[vi] Driving under the influence of drugs/alcohol.

[vii] Driving very fast in the circumstances.”

The crucial question to answer is whether there is evidence on record to prove the above allegations? In his testimony Corporal Bachwa Samuel (PW3), a police officer from Old Kampala Police Station testified that he visited the scene of the accident soon after the accident in question had occurred. He noticed that mini-buses registration Nos. 676 UAV and 375 UBA had collided on a hilly spot along Namirembe Road. However, before the said mini-buses collided, mini-bus registration No.375 UBA was travelling on the left hand side of the road and was proceeding to Namirembe, and mini-bus registration No. 767 UAV was travelling on the right hand side of the road and heading for the town centre, At the time of the collision, mini-bus registration No.375 UBA was overtaking another motor vehicle when it failed to do so. It then swerved to its right hand side and rammed into mini-bus registration No.767 UAV. Bachwa Samuel (PW3) was of the opinion that the driver of mini-bus registration No.375 UBA was responsible for the accident in question. He was overtaking another motor vehicle on a hill; and that is something he ought not to have done. Bachwa’s evidence was not challenged because the defendants chose not to appear and defend themselves. In Court’s opinion that evidence covers the acts of negligence that were complained of by the plaintiff in paragraph 7(1) to 7(v) and 7(vii) of the plaint. For that reason, the driver of mini-bus registration No.375 UBA was clearly in breach of a duty that he owed other road users when he drove that minibus in such a way as to cause a collision between his mini-bus and mini-bus registration No.767 UAV. In the circumstances, Court must hold that the accident in question was caused by the negligence on the part of the driver of mini-bus registration No. 375 UBA. The third issue is therefore answered in the affirmative.

With regard to the fourth issue, the Police Form that bears the details of the accident in question (Exh.”P5”) shows that the registered owner of mini-bus registration No.375 UBA is **BUZUBU CHARLES** (the 1st defendant). Indeed Buzubu Charles did not appear to defend himself in this suit. That tacitly means that he admitted that whoever was driving mini-bus registration No.375 UBA at the time of the accident had his authority to do so and was doing it in the course of his employment. In the circumstances, Buzubu Charles (the 1st defendant) is bound by the

negligence of whoever was driving mini-bus registration No.375 UBA on 31st March 1997 when it collided with mini-bus registration No.767 UAV along Namirembe road and caused injury to the plaintiff. (**See; Muwonge v A.G [1967] E.A. 17).**)

Be that as it may, paragraph 11 of the plaint indicates that the plaintiff sued the remaining two defendants (i.e. the 2nd and 3rd defendants) as beneficial owners of mini-bus registration No.375 UBA. However, the plaintiff did not produce an iota of evidence to prove that claim. In the circumstances, despite the fact that the 2nd and 3rd defendants did not appear to defend themselves, Court will not hold them liable for the negligence of the driver of the mini-bus in question because the plaintiff failed to establish a nexus between them and that mini-bus. For those reasons, the fourth issue is answered in the affirmative in respect of the 1st defendant and in the negative in respect of the 2nd and 3rd defendants. It follows that the interlocutory judgment that was earlier on entered against the 2nd and 3rd defendants must be set aside; and it is so ordered. This suit is therefore dismissed against the 2nd and 3rd defendants. However, since the two defendants did not appear to defend themselves, Court will make no order as to costs.

With regard to the fifth issue, the plaintiff is seeking special and general damages, interest and costs. The law is that special damages must be specifically pleaded and strictly proved. (**See Estate of Shamji Visram Kurji Karsan v Shaukesprasad Magaulal Bhatt and Anor. Civil Appeal No.25 of 19.64 reported in [1965] E.A 789 at page 796).**) The plaintiff specifically pleaded the particulars of special damages in paragraph 8 of the plaint as follows;

I] Medical expenses	371,700/=
ii] Police accident report	5,000/=
iii] Tuition fees	450,000/=
iv] Late registration fees	6,000/=

	832, 700/=
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Court is also satisfied that the plaintiff strictly proved the details of special damages when she produced the relevant receipts, namely, Exhs. "P1A", "P1B", "P1C", "P2" and the police accident report that she must have paid for. Court will therefore award her the special damages.

With regard to general damages, it should be remembered that the aim of damages is to compensate the plaintiff for the loss suffered as a result of the tortious act committed against her. **(See: Visram Karsan v Bhatt [1965] E.A. 789 at page 796).** Courts have always endeavoured to achieve the above aim by applying the principle that the injured party must as far as is possible be put, in terms of money, in as good a position as if the wrong complained of had not been committed. **(See: Phillips v Ward [1956] I ALLER 874).** Although there is no mathematical formula that enables Courts to get precise results, awards in decided case: are always a good guide in arriving at the required figure. Court was unable to lay its hands on recent decisions that provide a good comparison with the circumstances of this case. It will therefore use two old decisions as a guide for the award in this case. In the case of **Shaukatali Usufali Tejani v Abdu Nuru Sentamu HCCS 450/68 (Goudie J) reported in M.B.56/69**, the plaintiff suffered a fractured rib and deep tissue injuries to the chest wall, and a shoulder injury with 10% limitation upon movement of the arm. Her disability was assessed at 5%. She was awarded a sum of Shs.11,670/= as general damages. Using the US dollar as a base, that award would presently be the equivalent of Shs.3,000,000/= (i.e. $11,670 / 7 \times 1800$). In the case of **Dominiko Okello & Others v AG HCCS 22/70 reported in M.B. 62 of 70**, the plaintiff suffered injury to his chest involving fractured ribs. The most serious injury was found to be bruising of the heart. He was detained in hospital for 22 days and had to convalesce for 6 weeks afterwards. He was awarded a sum of Shs.30,000/= as general damages. Presently, that award would be the equivalent of Shs.7,714,000/= (i.e. $30,000 / 7 \times 1800$). In the instant case, the plaintiff fractured 6 ribs in the accident. Her liver was lacerated. She bled a lot internally. She was operated upon and hospitalized for 10 days. Presently, her chest pains and she cannot sit for long. Her disability was estimated by Dr. Sebuliba to be between 15% - 20%. Although the plaintiff's situation compares well with that of the plaintiff in **Dominiko Okello (supra)**, it is slightly more serious than Okello's in that Nalwoga continues to feel pain until now. In Court's view she deserves a slightly higher award. Therefore taking into account all including the depreciation of the Uganda shilling vis-a-vis the dollar since Dominiko **Okello (supra)** was decided Court thinks that a sum of

Shs.10m/= would be adequate as general damages for the injuries the plaintiff suffered in the accident in question.

With regard to interest on special damages, the plaintiff prayed for a figure of 45% @ annum from the date of filing the suit until payment in full. There is no evidence on record that the plaintiff obtained a bank loan to pay for the expenses she incurred under the head of special damages. Therefore the figure of 45%- interest @ annum is too high. In the circumstances, Court will grant her the figure of 15% interest @ annum in respect of special damages. All in all, final judgment is hereby entered in favour of the plaintiff against the 1st defendant (Buzubu Charles) in the following terms;

1. The 1st defendant shall pay the plaintiff special damages in the sum of shs.832,700/=.
2. The 1st defendant shall also pay the plaintiff a sum of shs.10m/= as general damages.
3. The 1st defendant shall further pay to the plaintiff interest on special damages at the rate of 15 @ annum from the date of filing this suit until payment in full.
4. The costs of this suit shall be borne by the 1st defendant.

E.S. LUGAYIZI

JUDGE

9/5/2001