

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
HIGH COURT CIVIL SUIT NO.969 of 2005

NANSUBUGA JOSEPHINE ::::::::::::::::::::::::::::::: PLAINTIFF

Versus

VISION FOR AFRICA ::::::::::::::::::::::::::::::: DEFENDANT

BEFORE: HON. JUSTICE REMMY K. KASULE

RULING:

This Ruling is in respect of a Preliminary objection by the Defendant that the plaintiff's plaint does not disclose a cause of action and therefore ought to be rejected.

The Preliminary objection is based on the claim by the Defendant, pleaded in paragraph 5 of the written statement of defence, to the effect that the plaintiff was paid compensation in full and final settlement of any claims, in respect of the injuries received in the road traffic accident, the foundation of the claim in H.C.C.S. No.969 of 2005. Having so bound herself, the plaintiff, has no cause of action against the Defendant and therefore the amended plaint discloses no cause of action. It ought to be rejected.

The plaintiff does not agree with the Plaintiff's submission. She contends that in paragraph 3 of the reply to the written statement of defence, she specifically pleaded that the defendant never compensated her as claimed in the written statement of defence.

The question whether a plaint discloses a cause of action has to be decided upon on perusal of the plaint alone together with anything attached to it as its part; and upon the assumption that any express or implied allegations of fact in it are true: See: **JERAF SHARIFF & CO. VS. CHOTAI FANCY STORES [1960] EA 374.**

A plaint discloses a cause of action if its averments show that the plaintiff enjoyed a right which has been violated and the Defendant is responsible for that violation: See: **Auto Garage Vs. Motokov (No3) [1971] EA 514** and **Joseph Mpamya Vs. AG [1966] II KALR 121**.

On the basis of the above principle, the amended plaint of the plaintiff in the suit shows that the plaintiff was made to suffer injuries to her body on 7th March 2005, by the Defendant's Motor-Vehicle Number UAF 882Y, and that the Defendant is liable because of the negligence the Defendant's driver in managing the Motor-Vehicle the result of which caused the accident. Thus the amended plaint on its own shows a cause of action.

The fact that the Defendant contends in written statement of defence that the plaintiff was paid compensation in full and final settlement, on its own, does not deprive the plaint of showing a cause of action.

Further, to the extent that the plaintiff avers in the reply to the written statement of defence that she was not compensated, then the matter whether or not compensation was paid to plaintiff in full and final settlement becomes an issue for trial raised by the pleadings of both parties. It does not make the plaint to be devoid of a cause of action. It is one of the defences for the Defendant.

The court is satisfied that the plaint, as it stands, shows a cause of action. The preliminary objection is disallowed.

The plaintiff shall have the costs of the objection.

Remy K. Kasule

Judge

30th June 2006