

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MBALE

HCT-04-CV-CS-0023 OF 2002

OMARA JIMMY.....PLAINTIFF

VERSUS

THE BOARD OF GOVERNORS/

MANAGEMENT COMMITTEE

KOTIDO MIXED PRIMARY SCHOOL.....DEFENDANT

BEFORE: THE HON. MR. JUSTICE RUGADYA ATWOKI

JUDGMENT

The plaintiff brought this action against the defendant under the Law Reform (Miscellaneous Provisions) Act Cap. 79. He claimed for special and general damages for the negligence acts of the defendant acts of the defendant which led to the death of his daughter Florence Achieng.

When the suit was filed and summons issued, the defendant did not file a defence. Under 0.9 r. 6 of the Civil Procedure Rules interlocutory judgment was entered and the suit was set down for formal proof.

The facts from which the suit arose were as follows. The deceases Florence Achieng was the 12 years old daughter of the plaintiff. She was a primary 3 pupil in Kotido Mixed Primary School, Hereinafter the defendant school. She was a boarding student, meaning that she was resident at the school. During the time when she at the school, she was reported dead from drowning in nearby river. The pupils in the school informed the plaintiff's wife. She reported to the husband, the plaintiff, who confronted the school authorities. He was not assisted in the least. He reported to the police, and mobilized people to search for the body of the girl.

Later, with assistance from the big boys from the defendant school, swimming in the river, the body of the girl Florence Achieng was recovered some distance from the school, having been

washed away from the school bank. Police transported it for post mortem. This was done from Abim where a doctor was available, and later buried.

The school was highly uncooperative in the reporting, search, and burial of Achieng. When the father asked for Achieng's properties like the mattress and suitcase, the school reported that they were missing.

The issues for determination are:

1. Whether the deceased was a pupil at the defendant school, and if so whether she died from the school.
2. Whether the defendant school or its agents were negligent.
3. The remedies are available to the parties.

It was submitted that the defendant did not file a defence, and did not offer any explanation about the facts put forth by the plaintiff. Those facts should therefore be taken as admitted.

Under O.8 r. 3 of the Civil Procedure Rules every allegation of fact in the plaint not specifically or by necessary implication denied shall be taken to be admitted. The defendant was served with summons to file a defence. There was an affidavit of service to that effect on the record. No defence was filed.

When the suit was set down for formal proof, hearing summons was served on the defendant. Another affidavit of service in that regard was also filed and is on the record. There was no appearance by anybody or representative from the defendant school.

The first issue was whether the deceased was a pupil at the defendant school, and if so whether she died from the school. The plaintiff testified that the deceased was his biological daughter. He paid school fees for her boarding education in the defendant school. He tendered a receipt of school fees payment for the first term of the year 2001 exhibit P1. He told court that he encountered great difficulties from the school authorities accessing records concerning his daughter.

His information was that the deceased moved out of the school gate with other pupils and went swimming in a seasonal river near the school. The school had a gate, which was manned by a

gatekeeper at all times. The fast running waters of the river swept the deceased and carried her downstream where she drowned. The death took place on or about 10th August 2001. This was during term. The deceased was at school during the term time.

PW2 D/ASP Okot Zake Silvano was a police officer. He received a report of the suspected drowning of a pupil of the defendant school. He moved to the river Longiro, which is about ¼ kilometer from the school. After days of searching, the body of a girl was covered from downstream the river. The body was identified as that of Florence Achieng, a primary 3 pupil in boarding at the defendant school.

His investigation revealed that a group of pupils went for a swim in his seasonal river, but the strong currents of the water overpowered the girl Achieng and carried her downstream. The other girls ran back to school.

The witness had the body transported to Abim hospital for post-mortem examination, in order to ascertain whether or not there was any foul play in the death of Achieng.

There was no defence, no evidence to controvert this testimony. I have no hesitation in concluding that the deceased Achieng was a pupil at the defendant school, and that she died while at school.

The second issue was whether the defendant or its agents were negligent. It was the testimony of the plaintiff that there was a gate at the school, which was supposed to be manned by a gatekeeper at all times. The deceased and her group must have gone through this gate. There was no evidence that any member of staff of the defendant school accompanied the pupils. There was no evidence that there was any person manning the school gate to stop pupils getting out without authorization.

In *Vinensio Kyolibera V. Wst Mengo District Administration* [1971] 1 ULR 273, it was held that a school owed a duty of care to the plaintiff and that the action of the teacher in allowing the children to go to the lavatory unattended was a breach of that duty. The lavatory was in a potentially dangerous condition, and the teachers should have checked them to ensure that it was safe for the children to use them.

In *Jemeo Nassimba V. Mubende District Administration* [1978] HCB 203 court held that it was the duty of a teacher to exercise supervision over his pupils when they were on school premises either in the classroom or on the play ground.

In the present case, the pupil drowned while swimming in a river apparently outside the gate of the school. It is my opinion that the school authorities owed a duty of care to the pupils while they were at school during school time. That duty of care extended to the boarding students all the time they were in boarding school. The duty extended further in respect of such pupils to ensuring that they did not leave the school premises, and where so, to move out unaccompanied by a responsible member of staff.

The deceased and others moved out of the school gate. They went for a swim. It was not clear whether this was authorized or not. There was no evidence either way. It was not shown that there was no a responsible member of staff accompanying the pupils. It was not shown whether or not there was a gatekeeper at the school gate. It was incumbent upon the school to show whether or not this was not an authorized excursion, or that the school authorities took all necessary measures to ensure the safety of the pupils, for it would be difficult for the plaintiff to prove the negative.

Absence of evidence to the contrary only reinforces the belief that there was negligence on part of the school authorities. They failed to live up to their duty of care in respect of pupils under their charge. It may be remembered that these were very young pupils in primary 3, aged 12 years old. The deceased disappeared about the 10th August, but the defendant school either did not find out about the disappearance, or if they did, they did not bother to inform the parents of the girl. It was not till fellow pupils of the deceased reported the disappearance to the mother, about three days after the incident that matters were known and steps taken to look for the girl. Even then, it was the plaintiff together with the police, but not the defendant school who undertook to look for the body of the girl. The negligence of the defendant school was clearly established and proved. The second issue is resolved in the positive.

The last issue was the remedies available to the parties. The court held in the case of *Sebuliba V. Ben Katende* [1982] HCB 56 that funeral expenses are recovered in suit. The plaintiff testified that he purchased a coffin, piece of cloth, food drinks and other items for the burial of his

daughter. He spent a total of shs. 927,000/- in that regard. He produced receipts exhibits P2 in support of his claim.

The receipts were in respect of;

- A coffin shs. 80,000/-
- Posho, beans and cooking oil shs. 281,000/-
- Diesel for lorry shs. 118,800/
- Cloth and blanket shs. 16,000/-
- Kerosene shs.14,000/-
- Cc oil for lorry shs. 25,500/-
- Sugar, flour, soap etc shs. 49,250/-
- Posho, beans, oil etc. shs. 113,200/-

The plaintiff also testified that he bought a cow at shs. 180,000/-, plus drinks at shs. 50,000/-. For these items no receipts issued as receipts are hardly ever issued in village transactions. The receipted items totaled to shs.697,750/-, while the un receipted items totaled shs. 230,000/-, while all together amounts to shs. 927,750/-.

In the case of *Kyambadde v. Mpigi District Administration* [1983] HCB 44, it was held that while special damages must be strictly proved, they need not be supported by documentary evidence in all cases. I was satisfied that the plaintiff bought the cow and drinks as he testified even though there were no receipts in respect thereof.

In *Frank Makumbi v. Kigezi Bus Co. Ltd.* [1986] HCB 69, it was held that loss of servitude is generally actionable at the suit of the parent. Evidence must be given of the age of the child and whether or not such a child was capable of rendering services to the parent. See also *Uganda Electricity Board V. G.M. Musoke SCCA No. 30 of 1993.*

The deceased was a 12 years old girl, in boarding school. That means that she was only at home during holidays. The plaintiff testified that she used to help in household chores. It cannot be that much of help a 12 year old would contribute by way of household chores. That is not say she could not assist at all. But consideration her age, the fact that she was most of the time in boarding school, her contribution in this regard must have been minimal. It was the evidence of

the plaintiff that the deceased would teach her siblings English during holidays. All that is now lost to the family.

There was loss of expectation of life. This was a 12 years old girl who would be expected to grow into a useful adult. This is usually a difficult head of claim to calculate, as it is fraught with risks and uncertainties.

I was not given sufficient guidance as to the measure of damages in this regard. I will accordingly do my best in the circumstances. Judgement is entered for the plaintiff against the defendant against the defendant. The plaintiff is entitled to recover, and it accordingly awarded the amount of shs. 927,750/- which he spent as funeral expenses. The plaintiff is awarded shs. 5,000,000/- for loss of expectation of life. The plaintiff shall also get the costs of the suit. The sums herein awarded shall attract interest at court rate from date of judgment till payment in full.

RUGADYA ATWOKI

JUDGE

14/07/2005

Court: The Deputy Registrar shall deliver this judgment to the parties.

RUGADYA ATWOKI

JUDGE

14/07/2005.

