

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION

CIVIL SUIT NO. 130 OF 2008

WEKESA JOHN PATRICK ::::::::::::::::::::::::::::::: PLAINTIFF

VERSUS

THE ATTORNEY GENERAL ::::::::::::::::::::::::::::::: DEFENDANT

BEFORE: HON. JUSTICE STEPHEN MUSOTA

JUDGMENT

Through his lawyers M/s Nandah Wamukoota & Co. Advocates, the plaintiff His Worship Wekesa John Patrick brought this action against the Attorney General for;

- a) Compensation under the Employment Act for 80% disability suffered by the plaintiff.
- b) General damages.
- c) Punitive damages; and,
- d) Costs of the suit.

The defendant the Attorney General initially denied responsibility.

The facts of this claim as can be deduced from the plaint are that the plaintiff is a serving Judicial Officer at the rank of Magistrate Grade I. Sometime in 2007 while handling **Pallisa Civil Suit No. 44 of 2007 Dome Stanley Vs Pulkol** and in the course of his employment a consent judgment was recorded by the parties. While visiting the *locus-in-quo*, although the defendant says he was requested by the parties to assist fix the boundaries for disputed land, the plaintiff was violently attacked and hacked to near death by one of the parties to the suit.

As a result of the attack, the plaintiff suffered and sustained serious injuries namely:-

- (i) Amputated right hand fourth finger and third left hand finger.
- (ii) Fractured and permanent paralysis of the upper jaw.
- (iii) The three left hand fingers were cut off and only joined by metals and have remained paralyzed permanently. Two other fingers have also remained paralyzed.
- (iv) The plaintiff suffered head and back injuries.
- (v) Salivary glands and duct were severed and one gland was removed.
- (vi) Nerve paralysis and sinuses were damaged and as a result the plaintiff suffers constant releases of fluids and is permanently on antibiotics and sedatives.

The defendant admitted liability and what was left was to determine the quantum of damages that are appropriate to compensate the plaintiff. It is also undisputed that the Ministry of Gender, Labor and Social Development approved payment of Ug. Shs. 72,480,000/- as worker's compensation under the Workerman's Compensation Act. Consequently in view of that approval judgment will be entered for the assessed 72,480,000/- as workers compensation.

In an attempt to settle the claim for general damages, the defendant offered 30,000,000/- which sum was rejected by the plaintiff in preference of a sum of 200,000,000/- enhanced damages. Therefore what is left for this court to do is to determine the quantum of damages that are appropriate to compensate the plaintiff.

In his submissions in rejoinder, learned counsel for the plaintiff stated that the 30,000,000/- offered is meagre considering the pain and suffering the plaintiff has been subjected to as a result of the injuries suffered. That the plaintiff's treatment is outside Uganda in India and payment for the same is in Dollars. That with the ever depreciating value of the shilling and uncertain health condition of the plaintiff, the proposed quantum of damages is not enough.

Learned counsel further submitted that many of the award cited in such cases date back in the 1990s when the Uganda shilling was stable and cannot be compared to the present situation where there is inflation and the value of the dollar is skyrocketing every day.

Learned counsel further submitted that damages of this nature are discretionary and given the suffering and pain, none functional fingers, nose parts, inability to do manual work, reduced sexual abilities and constant medication, enhanced damages should be awarded. Learned counsel for the plaintiff proposed a figure of 200.000.000/= as reasonable. That any suggestion that the plaintiff wants profits from his injuries is provocative and is a sign of no remorse on the part of the defendant for the plight and suffering of the plaintiff. Further that general damages of UGX 100.000.000/= also be awarded.

Regarding further compensation, Mr. Bafirawala learned counsel for the defendant, submitted that from the analysis of the evidence vis-a-vis the law, the amount claimed by the plaintiff is exorbitant and devoid of merit. That the plaintiff has not suffered any loss of earning capacity because from the evidence on record, it is shown that after treatment the plaintiff got his job back as Magistrate and has worked at Buganda Road, Nabweru and Nakawa Chief Magistrate Courts. That this shows that despite the injuries that were regrettably inflicted on him, he did not lose his capacity to earn. That he still conducts his judicial duties from which he earns a salary and all amenities that he used to get before the accident. Further that there is no loss of earning capacity, present or future that has been suffered by the plaintiff as a result of the assault.

Regarding suffering and pain, Mr. Bafirawala submitted that indisputably the plaintiff was assaulted and as such subjected to some degree of pain and suffering consistent with the injuries sustained but it is on record that the defendant catered for the plaintiff's medical expenses and still contributes to the same and has already approved payment of 72,480,000/- as workers compensation. Therefore the plaintiff should not be permitted in the circumstances to profit from injuries sustained.

Finally, learned defence counsel submitted that the defendant has in all fairness rendered the entire remedial assistance required in the circumstances to the plaintiff and therefore the plaintiff is not entitled to any further compensation from the defendant for the injuries sustained as doing so would amount to unjust enrichment which is not the motive of Courts of Justice.

In the instant case, the plaintiff seeks for the award of aggravated and general damages. It was held in the case of **Fredrick J Zaabwe Vs Orient Bank & ors SCCA No. 4 of 2006** that aggravated damages are extra compensation to a plaintiff for injury to his feelings and dignity caused by the manner in which the defendant acted. These are meant to deter the wrong doer from repeating the act or for wounded feelings of the plaintiff. They result from the wanton disregard of the plaintiff's rights by the defendant.

On the other hand, general damages are those that the law presumes to arise from direct, natural or probable consequences of the act complained of by the victim. These follow the ordinary course or relate to all other terms of damages whether pecuniary or none pecuniary, future loss as well as damages for paid loss and suffering. This was also decided in the case of **Uganda Commercial Bank Vs Deo Kigozi [2002] EA 293**.

Having these legal principles in mind and after a careful consideration of the evidence and the circumstances under which this unfortunate instance happened, I am of the considered view that the plaintiff herein is not entitled to an award of aggravated damages since the actual perpetrator of the injuries was not sued. Aggravated damages would arise from the injury to the plaintiff's feelings and dignity caused by the manner the perpetrator acted. This would deter the wrong doer from repeating the act complained of.

However in the circumstances of this case, the plaintiff is entitled to general damages.

It was held in the case of Livingstone Versus Rawyards Coal Co. [1880] 5 App Cases 25, 39 that;

“Where the injury is to be compensated by damages, you are to consider what is the pecuniary consideration which will make good the sufferer as far as money can do so, the loss which he has suffered and the natural result of the wrong done to him.”

While considering the quantum of damages, the following should be taken into account:

- a) Pain and suffering.
- b) Disability and loss of amenities.
- c) Loss of expectation of life.
- d) Loss of earnings
- e) Future expenses
- f) Loss of earning capacity.

From the submissions by learned counsel for the defendant, his only complaint was that the figure suggested by the plaintiff is exorbitant because the plaintiff is still on duty and earning a salary and all amenities that he used to get before the accident. Whereas it is true that the plaintiff is still in employment and earning salary, this court is aware that the meagre salary the plaintiff earns cannot sustain him without supplementing it through other work. At the moment the plaintiff is almost incapacitated by a permanent disability of 80% as revealed by the medical report from Victoria Medical Center. This disability is high because his body requires external aid to function. He has undergone untold mental anguish and trauma. The defendant failed to protect him while on duty and there was negligence in failing to protect the plaintiff while on duty.

I will therefore consider an award of UGX 120,000,000/- as reasonable on account of general damages. The said award will carry an interest of 6% from the date of filing of the suit until payment in full.

In final result judgment is entered for the plaintiff in the following terms:

- (i) UGX 72,480,000/= as assessed for workers compensation
- (ii) An award of UGX 120,000,000/= as general damages
- (iii) Interest on (ii) of 6% from the date filing the suit till payment in full

The plaintiff shall get the taxed costs of the suit. I so order.

Stephen Musota

J U D G E

06.10.2015