

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**LAND DIVISION**  
**CIVIL SUIT NO. 689 OF 1996**

**1. ERIEZA KIGGUNDU**

**2. REV. CANON KYEGIMBO**

**3. ELIZABETH N. NALONGO**

**4. TUSUBIRA KUTUUSA**

**5. SEPIRIYA KAYONGO**

**6. BYARUHANGA** ..... **G.** **W.**  
**PLAINTIFFS**

**VERSUS**

**1. BWANSWA LOCAL COUNCIL III**

**2. ATTORNEY GENERAL** .  
..... **DEFENDANTS**

**Hon. Lady Justice Monica K. Mugenyi**

**JUDGMENT**

The plaintiffs were residents of Kakumiro, Bwanswa Sub-County in Kibale District. On 19<sup>th</sup> August 1995 the first defendant commenced the construction of a road network in Bwanswa Sub-County, in the course of which the plaintiffs' houses, construction slabs, trees and crops were allegedly destroyed. The Grader/ Excavator Reg. No. UW 1255 that was used in the road construction exercise allegedly belonged to the Ministry of Works and the driver thereof failed to control it in such a way as would

avert damage to the plaintiffs' property, for which the plaintiffs purport to hold the second defendant vicariously liable.

The parties framed the following issues for determination:

1. Whether the plaintiffs have a cause of action against the defendants.
2. Whether the road construction project was a Sub-County or District Council project.
3. Whether the plaintiffs owned the damaged properties.
4. Whether there was any damage to the plaintiffs' properties.
5. Remedies, if any.

This Court proposes to address issues 3 and 4 together, followed by a consideration of issue 2 and shall conclude with a determination of issues 1 and 5 respectively. At trial the plaintiffs were represented by Mr. Frank Sewagudde, while the defendants were represented by Mr. Vincent Kamugisha and Ms. Christine Kaahwa respectively.

**Issues No. 3 & 4:** *Whether the plaintiffs owned the damaged properties, and whether there was any damage to the plaintiffs' properties*

Save for the fifth plaintiff who did not testify in this matter, it was a common thread in the plaintiffs' evidence that they had a proprietary interest in land at various locations within Kakumiro, and their properties and crops had been destroyed as a result of the road construction works on Kyegimbo Road in Kakumiro. To that end, the first and third plaintiffs availed this court with certificates of title reflecting their ownership of land comprised in LRV 1601 folio 22 at Kakumiro Trading Centre and Block 300 plot 12 at Kakumiro, admitted as Exhibits P1 and P3 respectively; the second plaintiff presented a lease offer in respect of 5 acres of land at Kakumiro, Bwanswa and payment therefor that were admitted as Exhibit P2, and the fourth and sixth plaintiffs presented sales agreement in respect of their properties at Kakumiro, which were admitted as Exhibits P4 and P6 respectively. The plaintiffs did also rely upon a valuation report that was admitted on the record as Exhibit P7, as well as a report prepared by the then Assistant Agricultural Officer in charge of Bugangaizi that was admitted in evidence as Exhibit P9. It was contended for the plaintiffs that the certificates of title adduced in evidence were conclusive proof of ownership of the land that they pertain to, and the plaintiffs property rights had been violated given the non-payment to date for the compulsory acquisition of portions of their land. Counsel submitted that the land's

presence in a road reserve was immaterial, suggesting that the road reserve was created after the road construction works.

Conversely, learned Counsel for the first defendant questioned the veracity of the plaintiffs' claim to property in the area that was utilised for road construction, questioning PW7's instructions to produce the report contained in Exhibit P9. Counsel sought to rely on witness statements that had been abandoned in preference for oral evidence and were, to that extent, not part of the record. This Court shall disregard his submissions in that regard. On her part, learned Counsel for the second defendant essentially highlighted discrepancies in the number of crops allegedly affected by the road works as stipulated in Exhibits P7 and 8, on the one hand, as against the crops stipulated in Exhibit P9.

As observed earlier in this judgment, I am constrained to state from the onset that I find no evidence whatsoever in respect of the fifth plaintiff's claim either as a resident of Kakumiro or as a litigant whose property was destroyed as alleged in paragraphs 6 and 8 of the Plaint. I would therefore summarily dismiss his claim against the defendants. Reference to the plaintiffs shall, therefore, be restricted to the outstanding plaintiffs herein.

The said plaintiffs furnished documentary evidence of their proprietary interests in various pieces of land in Kakumiro. I do agree with Mr. Sewagudde that a certificate of title is conclusive evidence of ownership of land. Such title may be impeached on account of fraud, but that was not in issue in this matter. Therefore, the first and third plaintiffs have conclusively established that they did own land in Kakumiro. On the other hand, the second, fourth and sixth plaintiffs relied on a lease offer and sale agreements to prove their interest in pieces of land in the same locality. The second plaintiffs 5 year lease offer was due to expire in May 2000, well after he filed the suit and testified in this matter. No evidence was adduced by the defence that would suggest that he failed to meet the terms of extension of that initial 5-year offer. In the premises, on a balance of probabilities, I find that he has established his proprietary interest in the land in issue. Similarly, it is trite law that an equitable interest in land may be deduced from a legally enforceable contract for the sale of land. See **Lysaght vs. Edwards (1876) 2 Ch D 499**; **Katarikawe vs. Katwiremu (1977) HCB 187 at 190** and **Manzoor vs Baram (2003) 2 EA 580 at 591**. Therefore, in the absence of evidence to the contrary, proof by the fourth and sixth plaintiffs that they purchased and paid for the land stipulated in Exhibits P4 and P6 would establish their equitable interests in

the said land. The question is whether, having established their proprietary interest in the highlighted pieces of land, the plaintiffs had sufficiently demonstrated that their properties and crops on that land had been destroyed owing to the road construction works that were undertaken on Kyegimbo Road in Kakumiro.

The plaintiffs sought to rely on Exhibits P7, P8 and P9 in proof of the alleged damage to their properties and crops. Exhibit P7 is a valuation report that makes an assessment of the compensation allegedly due to the plaintiffs arising from the purported damage to their crops and properties due to the road works on Kyegimbo Road. It was authored by PW6 and is dated 15<sup>th</sup> September 2004. PW6 did, in his oral evidence, clarify that this report was premised on an earlier report by PW7 that was adduced in evidence as Exhibit P9. Indeed, under cross examination PW6 explained that the part of his report that had been tabulated under the heading 'SCHEDULE OF CROPS/ PROPERTIES DESTROYED BY THE GRADERS AND CONSTRUCTION LABOURERS' had been wholly derived from Exhibit P9. Exhibit P7 highlighted affected crops and properties that were attributed to the plaintiffs (save for the fifth plaintiff who did not feature at all). PW6 did also concede to having relied on information on the damage to crops and properties as relayed to him by the plaintiffs, given that he had gone to the site 9 years after the event. The witness further testified that his report had been wholly adapted to Exhibit P9 with regard to the crops and properties that were destroyed, his report only factoring in the 2004 rates payable for the alleged destruction and introducing the issue of a road reserve. However, pressed to explain the disparities between the crops cited in Exhibit P9 viz those that he had cited in Exhibit p7, PW6 explained that the disparity arose from his incorporation of information (lists) provided to him by his clients, the plaintiffs, as well as the additional property lying in the road reserve that had not been factored into Exhibit P9. Exhibit P8 was largely a 2014 update of the 2004 report with some minor inconsistencies.

On the other hand, Exhibit P9 is a report by PW7 on crops that stood to be affected by the then impending road works. It only highlighted crops attributed to the first, second and third plaintiffs and made no reference whatsoever to buildings and concrete slabs. PW7, the author of that exhibit, clarified in oral evidence that there had been a plan to compensate occupants of the area demarcated for Kyegimbo Road and that was the reason he had been requested to enumerate the crops in the road's route. The witness testified that the rates indicated in his report were derived

from a district document that detailed the monetary values applicable to different crops, but did not avail that document to this Court. He further testified that the crop owners had not been paid to date. Under cross examination, the witness clarified that there were no buildings along the road; only 5 people were affected by the road works in issue, and the land each of those people lost to the road works was about 50 x 4 metres in size.

This Court found PW7's evidence clear and cogent. His report captured the contingent liability in terms of compensation claims that was anticipated to accrue from the planned road works. This liability was captured in real time and after the proposed road's route had been clearly demarcated by surveyors. No evidence has been adduced before this Court as would suggest that the planned route subsequently changed. Exhibit P9 would thus represent an accurate account of the crops that were within the path of the proposed road expansion and faced impending destruction, as well as the owners thereof. It explicitly outlined the 5 people that were entitled to compensation arising from the road works, as well as the amounts payable to each of them on that account. These claimants include the first, second and third plaintiffs only.

It would appear that the plaintiffs, nonetheless, went ahead and contracted PW6 to produce another report on the question of compensation incidental to the road works on Kyegimbo Road. PW6 claimed to have premised his report on PW7's report but this Court is unable to agree with his findings for the following reasons. First, Exhibit P7 introduced the fourth and sixth plaintiffs to the list of claimants for compensation without any basis. They were never recognized in Exhibit P9 as legitimate claimants, and no evidence was furnished to demonstrate that the original road route upon which the legitimate claimants were recognized had changed or, indeed, any other circumstance had arisen as actually put their property within the road route so as to entitle them to claim for compensation for the deprivation or destruction thereof. PW6 appears to have quite simplistically relied upon information given to him by the plaintiffs to justify his inclusion of the additional claimants and additional claims of crop and property destruction. This does not seem to me to be an authentic manner of verifying claims for compensation. Secondly, no attempt was made to establish a nexus between Kyegimbo Road's route and the pieces of land that were attributed to the plaintiffs as would justify the additional claims highlighted in Exhibit P7 over and above those listed in Exhibit P9. An area map highlighting the road's trail viz the plaintiffs' land and the structures and activities thereon would have been very pertinent. Exhibits P7 and 8

attributed additional properties and crops that were allegedly affected by the road works to the plaintiffs, but do not demonstrate that the said crops and buildings were indeed within the expanded road's path. It is quite possible that the destruction highlighted in the said exhibits, if valid, could have been caused by other factors and not necessarily the road construction works in issue presently. This possibility is buttressed by the fact that the purported valuation exercise in Exhibit P7, the precursor to Exhibit P8, was undertaken in 2004, 9 years after the road works in issue presently. The onus to establish that the alleged damage to crops and property outlined in the Exhibits P7 and P8 was, in fact, occasioned by the road works so as to justify the additional claims for compensation lay squarely with the plaintiffs. See sections 101(1) and 103 of the Evidence Act.

PW6 did seek to justify the additional claims in Exhibits P7 and 8 with the suggestion that he included property in the road reserve, which (according to him) had not been included in Exhibit P9. This was contested by learned Counsel for the second defendant, who submitted that all crops and properties in the road reserve should be expunged from the list of compensatable items. I am inclined to disagree with learned Defence Counsel on this. I do recognize that under section 3 of the Roads Act, Cap 358, land that is demarcated as being part of a road reserve must be kept clear of buildings, trees or permanent crops therefore a person or entity that violates that legal provision would bear any loss arising therefrom. However, the provisions of section 3 of the Road Act are premised on a road reserve having been duly declared as such by statutory instrument as prescribed in section 2 of the same Act. No evidence was adduced in this Court to suggest that this had been done. Therefore, there is no road reserve to speak of in the instant case. It was the submission of learned Counsel for the plaintiffs that the road reserve was demarcated after the expansion of Kyegimbo Road. With respect, I find no evidence in support of that assertion. On the contrary, I am at pains to understand the basis of PW6's inclusion of crops and buildings in the alleged road reserve in Exhibits P7 and 8. I find nothing in Exhibit P9 to suggest that crops in the area ordinarily designated for road reserves were not taken into account by PW7. In fact, Exhibit P9 makes reference to the report having been premised on an *'assessment of the crops through which the new road was going to be constructed.'* Section 2 of the Roads Act defines the area typically covered by road reserves as **'imaginary lines parallel to and distant not more than fifty feet from the centre line of any road.'** It follows, therefore, that crops through which a road passes, as was the

mainstay of Exhibit P9, would fall within the fifty-foot demarcations prescribed for road reserves. Consequently, I find no justification for the additional claims in Exhibits P7 and 8 for crops allegedly in the road reserve as these crops had been duly addressed in Exhibit P9.

On the other hand, the defence evidence is to the effect that there were no crops or permanent buildings affected by the Kyegimbo Road expansion works as there was no agricultural activity close to the road and neither were there any buildings within its path. This was attested to by both defence witnesses. DW1 also sought to discredit Exhibit P9 by challenging the origin of PW7's instructions. However, under cross examination he conceded that he would not have been consulted before the appointment of PW7 to undertake an assignment of that nature. It does, therefore, seem to me that DW1's attempt to challenge the validity of PW7's appointment was not grounded in evidence, but conjecture. Be that as it may, a common thread running through the defence witnesses' evidence and that of PW7 was that there were no buildings along the road. DW1 clarified that the owners of mud and wattle houses had been persuaded to demolish them. The sum effect of the defence evidence and that of PW7 is to rebut the plaintiffs' claim for compensation in respect of buildings and structures.

Therefore, having duly evaluated the totality of the evidence on this issue, I would uphold the proof of compensation claims stipulated in Exhibit P9 as an accurate reflection of the compensation claims that arose from the road works on Kyegimbo Road in Kakumiro. I find that the first, second and third plaintiffs have established that they had a proprietary interest in the land described as LRV 1601 folio 22 at Kakumiro Trading Centre, 5 acres of land at Kakumiro, Bwanswa and Block 300 plot 12 at Kakumiro respectively; and their crops on those tracts of land were indeed destroyed as a result of the road works on Kyegimbo Road. I would, therefore, answer issues 3 and 4 in the affirmative with regard to the first, second and third plaintiffs; and in the negative in respect of the fourth and sixth plaintiffs.

**Issue No. 2:** *Whether the road construction project was a Sub-County or District Council project*

It was the plaintiffs' case on this issue that the road construction works were a project of the first defendant and it was that defendant that the plaintiffs sought to hold responsible for the compulsory acquisition of their land. The plaintiffs also sought to hold the second defendant vicariously liable for the destruction meted out by a Grader/ Excavator Reg. No. UW

1255, which allegedly belonged to the Ministry of Works. Learned Counsel for the second defendant agreed with the plaintiffs on the first defendant's responsibility for the road construction works, but did not address this Court on whether the second defendant was indeed vicariously liable for the destruction attributed to the Grader. I shall revert to the second aspect of the plaintiffs' case later in this judgment during a determination of the question as to whether or not the plaintiffs' case discloses a cause of action. For present purposes, however, the first defendant contended that the road works in issue were a project of the District Council and not Bwanswa Sub-County.

I have carefully evaluated the evidence on record. Over and above the assertions by the plaintiffs, both defence witnesses did attest to the road works having been a Bwanswa Sub-County project. DW1, then a Councillor in Kilumba Parish in Bwanswa Sub-County, categorically testified that in 1995 the sub-county decided to widen Kyegimbo road; DW2, a resident of Kakumiro at the time, testified that before the road works commenced the LCI and LCIII Chairpersons of the area explained to the residents that '*they wanted to develop the area and had to construct the roads*'; PW7, an employee of Kibale District Local Government, did also testify that the road works were undertaken by Bwanswa LCIII. I find no reason to disbelieve the foregoing evidence.

As quite rightly submitted by Mr. Sewagudde and Ms. Kaahwa, section 2(1) (d) of the Resistance Councils and Committees Statute of 1987 established Sub-County Resistance Councils such as Bwanswa LCIII, the first defendant. Section 11(4) of the Local Governments (Resistance Councils) Statute of 1993 did, in the following terms, recognise the legal personality status of sub-counties to undertake designated activities:

**"A County or Sub-County or Division Resistance Council shall, in its corporate name, in addition to the functions specified under sub-section 3 and in consultation with the District Council, carry out any activity that is necessary or conducive to social, cultural and economic development of the area."**  
(*Emphasis added*)

The activities that are recognised in section 11(3) of that Statute include programs for the development of basic infrastructure and municipal works. Upgrading a path-like 'road' into a murrum road, as happened in the instant case, seems to me to fall within the ambit of basic infrastructure



development and municipal works. I am, therefore, satisfied that the road construction works were well within the mandate of and did entail a project of Bwanswa Sub-County, the first defendant herein.

**Issue No. 1:** *Whether the plaintiffs have a cause of action against the defendants*

It was argued by Mr. Sewagudde that the plaintiffs enjoyed a right to their land, crops and other property that they attested to having been destroyed in the course of the road construction; and the said right had been violated when the road construction project was conceived and implemented by Bwanswa sub-county with the help of Kibaale district, using a Central Government Grader/ Excavator Reg. No. UW 1255. In learned Counsel's opinion, the facts of the present case did establish a cause of action against the defendants jointly and/ or severally. He cited the cases of **Auto Garage vs. Motokov (1971) EA 514 at 519** and **Sempa Mbabali vs Kidza & 4 Others (1985) HCB 47** in support of his position.

Conversely, learned Counsel for the first defendant contended that the 2 defence witnesses had demonstrated that the decision to improve the road network in Kakumiro Town had been unanimously agreed to by all the residents of the area; it was only the first, second, third and fourth plaintiffs that had land adjacent to the widened Kyegimbo Road therefore the fifth and sixth plaintiffs' claims in the present suit were false, and the widening of the said road by 1 metre on either side could not have destroyed anybody's crops or property as this area was considered a road reserve. Counsel thus invited this Court to find that the plaintiffs had no cause of action against the first defendant because they suffered no loss as a result of the road construction. In the alternative, Counsel argued that should this Court find that the plaintiffs did suffer loss, they should be deemed to have consented to the little inconvenience that accrued from the road works. On her part, learned Counsel for the second defendant briefly submitted that whereas the evidence on record had established that some of the property that was destroyed was in a road reserve; the plaintiffs had agreed to the development of the sub-county and were part of the development committee; the excavator had been borrowed from Mubende to facilitate the construction of roads in Bwanswa Sub-County, and the project belonged to the local governments in Kibaale District; nonetheless, the suit disclosed no cause of action against the second defendant.

This Court reiterates its earlier findings that no cause of action has been established in respect of the fourth, fifth and sixth plaintiffs. Nonetheless, it has been duly established that the first, second and third plaintiffs enjoyed property rights to the pieces of land afore-described and their crops on the said land were destroyed in the course of road works on Kyegimbo Road. The question then would be whether or not the defendants are jointly or severally responsible for the said deprivation and/ or destruction to the said plaintiffs' properties.

It has been established in the preceding issue that the road works in question were a project of the first defendant. It follows, therefore, that the first defendant would be held responsible for the damage and destruction incidental to the road construction works. I so hold.

With regard to the second defendant, it was argued for the plaintiffs that the office of the Attorney General would be vicariously liable for the damage meted out by the Grader/ Excavator Reg. No. UW 1255 in so far as the said Grader was the property of the Central Government's Ministry of Works. With respect, I am unable to agree with this position. The very essence of what constitutes vicarious liability would, in my considered view, defeat this argument. Vicarious liability entails legal liability that is imposed on a person for torts or crimes committed by another person, usually an employee acting in the ordinary course of his or her employment, through no personal fault of the principal or employer. Indeed, case law abounds where employers have been held vicariously liable for torts committed by their employees in the ordinary course of their employment. See **Photo Productions Ltd vs. Securicor Transport Limited (1978) All ER 146 (CA)** and **Thunderbolt Technical Services Ltd vs. Apedu & Another Civil Suit No. 340 of 2009**. In the instant case, no evidence was adduced as would establish that the person that operated the Grader in issue was an employee of the Central Government acting in the ordinary course of his/ her employment, so as to attribute vicarious liability to the second defendant. Certainly, vicarious liability does not accrue from the mishaps of mechanized equipment, as appears to have been the suggestion in this case. This might accrue in the field of workmen's compensation, but that is not the issue presently. I therefore find that the second defendant cannot be held vicariously liable for the destruction of crops by the Grader Reg. No. UW 1255.

In the result, I am satisfied that a cause of action has been established by the first, second and third plaintiffs as against the first defendant. However, I find no cause of action against the second defendant. I so hold.

**Issue No. 5:**     *Remedies, if any*

In their Plaint dated 18<sup>th</sup> July 1996, the plaintiffs sought the following remedies:

- a. Compensation for the destroyed properties.
- b. General damages.
- c. Interest at 50% p.a from the date of filing the suit till the date of judgment.
- d. Costs of the suit.
- e. Any other relief as the Court may deem fit.

For reasons expounded earlier in this judgment, this Court has disallowed the compensation valuation contained in Exhibits P7 and 8 in deference to the valuation report entailed in Exhibit P9. Learned Counsel for the plaintiffs justified his claim for general damages with the rationale therefor as expounded in **Vol. 12 Halsbury's Laws, 4<sup>th</sup> Edition, para. 1202** to wit 'damages are pecuniary recompense given by process of law to a person for the actionable wrong that another has done to him.' In the instant case, having found that a cause of action has been established by the first, second and third plaintiffs against the first defendant, it does follow that an actionable wrong has been established for which the said plaintiffs are entitled to compensation.

Mr. Sewagudde did also cite section 26(2) of the Civil Procedure Act (CPA) in support of his claim for interest, this being a claim for monetary payment. Furthermore, Counsel referred this Court to section 27(2) of the CPA, as well as the cases of **Francis Butagira vs. Deborah Mukasa Civil Appeal No. 6 of 1989** (SC) and **Uganda Development Bank vs. Muganga Construction Company (1981) HCB 35**, where the principle that costs generally follow the event was aptly stated. I do respectfully abide by the foregoing legal positions.

In the final result, the plaintiffs' claims against the second defendant are hereby dismissed with costs. The claims by the fourth, fifth and sixth plaintiffs as against the first defendant are also dismissed with costs. Judgment is entered for the first, second and third plaintiffs as against the first defendant with the following orders:

1. The first defendant is ordered to effect compensation to the first, second and third plaintiffs in the sum of Ushs. 682,410/= as follows;
  - a. E. Kiggundu - Ushs. 160,050/=
  - b. Rev. Can. Kyegimbo - Ushs. 117,900/=
  - c. E. Nnalongo - Ushs. 404,460/=
2. Interest is granted pro rata on the figures above at 5% p.a from the date of filing of the suit until payment in full.
3. General damages are hereby awarded to the first, second and third plaintiffs in the sum of Ushs. 10,000,000/= payable at 8% interest from the date hereof until payment in full.
4. Each party shall bear its own costs.

I so order.

**Monica K. Mugenyi**  
**Judge**

12<sup>th</sup> December 2014