IN THE SUPREME COURT OF UGANDA

AT MENGO

CORAM: MANYINDO, D.C.J., ODER, J.S.C., & PLATT, J.S.C.

CIVIL APPEAL NO. 19/91

BETWEEN

UGANDA MOTORS LIMITED::APPELLANT

AND

WAVAH HOLDINGS LIMITED::RESPONDENT

(Appeal from a judgment/decree of the High Court of Uganda at Kampala (Mr. Justice A.R. Soluade) dated 5th June 1991 in High Court Civil Suit No. 85 of 1989.)

(The following Judgments were delivered on the 1st July 1992)

JUDGMENT OF PLATT, J.S.C.

The counsel representing the Appellant, Uganda Motors Ltd, and the Respondent, Wavah Holdings Ltd, put before the court an interesting series of arguments and counter arguments with a wealth of authority; and while one must congratulate them, it is a pity that the full range of desirable evidence was not, or perhaps could not be put before the High Court at the trial. The leaned Judge explained the central predicament in this case in these words:-

> *"In the course of the hearing, I inquired from the learned counsel for the Plaintiff if the Fire Brigade had answered the distress call would be called, and if any report by the police and or the Fire Brigade would be produced? He informed the court that all his efforts to secure their co-operation to produce the reports were unsuccessful. I mention this in pass-ing because without these reports especially the one from the Fire Brigade and their evidence in Court, it will be impossible to detect the cause of the fire which is essential in a case of this nature. I am therefore left in the absence of such evidence to proceed on what is before the Court."*

The non contentious evidence before the Court disclosed that on 25th June, 1989, the watchman of Wavah Holdings Ltd, the Plaintiff at the trial and now Respondent, reported on duty at 4.40 p.m. on this Sunday afternoon, in preparation for relieving the day guard, and for himself to take over the night guard. Wavah Holdings Ltd, is a motor car business, comprising a showroom and a garage behind. Uganda Motors Ltd, is a similar business also with a show room and garage behind immediately adjacent to Wavah Holdings Ltd. The latter had closed its garage for the

weekend, and the watchman, Malakiya Rudandika (P.W.1), inspected the garage and finding nothing amiss, returned to sit down in the show room. It seems that almost at once, or at any rate before 5 p.m. (if one takes into account the time given by other witnesses) Malakiya Rudandika saw people running from the opposite side of the road towards the building of Uganda Motors Ltd. He went to the gate to ask what was happening and one of the people running answered that he had seen "fire" from Uganda Motors Ltd's buildings. Malakiya Rudandika went and opened "my" garage, and saw smoke which had filled "our" garage coming from Uganda Motors Ltd, as far as he could see. He was sure, however, that the smoke did not come from "our" building. (It will be understood that Malakiya was speaking not in terms that he owned the garage, but in the sense that he was in charge of it and guarding it for his employer.) Malakiya telephoned Moses Johnson Kamia, who came to the scene; the latter rang a friend; and later the Fire Brigade came. The latter went to the buildings of the Uganda Motors Ltd to try to put out the fire. It seems that this was impossible because of the heat.

Mr. John Ntanzi (P.W.2), having received the news of the fire tried to alert the Managing Director and Chairman of Wavah Holdings Ltd; but having failed got the keys [and]went to the garage store. The police, a fire tender, and the Fire Brigade were there. The witness and no doubt others were able to break into the garage and push the vehicles therein outside. Another Fire Brigade from Entebbe arrived and reduced the heat and burning. The workshop was not in immediate danger; the spares were saved; a large crack developed in the adjoining wall. While removing the vehicles, the wall of Uganda Motors Ltd broke. The purlins and rafters were partly burnt. The fire in the Wavah Holdings Ltd premises was finally put out at about 12.00 midnight; but he thought that Uganda Motors premises were still on fire.

Two police officers gave evidence for the defence. The result of their observations is that they did not go to find out from where the smoke came, and they could not tell the cause of the fire.

The learned Judge came to the conclusion that the fire originated from the buildings of the Uganda Motors Ltd. But he could not tell what caused the fire. However, the fire was under the management of the Uganda Motors Ltd. It could not have occurred without the negligence of the Uganda Motors Ltd. Consequently he held that Company liable. He assessed special damages at shs. 6,774,179/-, and general damages at shs. 200,000/-.

Uganda Motors Ltd, appealed on issues of fact and law. The Appellant contended that the learned Judge was wrong to hold that the fire originated on the Appellant's premises and was under its management. Having found no evidence as to the cause of the fire, the Judge ought to have found it to be accidental. In these circumstances the learned Judge should not have applied the doctrine of **Res Ipsa Loquitur**, thus finding the Appellant guilty of negligence. It was wrong to shift the burden of proof on to the Appellant by finding that the Appellant gave no evidence as to steps taken to prevent the fire or why it occurred. These objections were set out in the first five grounds of appeal, and the last ground concerned the quantum of damages.

Having heard counsel for both parties, it would seem that a central issue related to the application of the doctrine of **res ipsa loquitur**. As I have pointed out in the introductory paragraph of this judgment, the learned judge was faced with little or no evidence as to the cause of this fire. The argument concerned the application of either the doctrine of **Res Ipsa Loquitur**

or the **Fires Prevention (Metropolis) Act 1774**. For the appellant, it was contended that the doctrine did not apply while the **Act of 1774** did apply as an **Act** of general application. For the Respondent it was of course asserted that the Act of **1774** did not apply. The common law was relied upon which therefore brought the doctrine into play. The effect of the argument is this. At common law, if a fire began on a man's own premises, by which those of his neighbor were injured, the latter in an action brought for such injury, would not be bound in the first instance to show how the fire began, but the presumption would be (unless it were shown to have originated from some external cause) that it arose from the neglect of some person in the house. (See Lord Tenterden C.J. in **BECQUET vs. McCARTHY** set out in **MASON vs. LEVY AUTO PARTS (1967)** 2ALL ER p. 62 & 67, see also Lord Wright's speech in **COLLINGWOOD vs. HOME AND COLONIAL STORES** (1936) 3 ALL E.R. 200,203). The common law, therefore, held the person upon those premises the fire originated liable if he was negligent, and presumed him negligent if the cause was not known, unless that person could show that the fire was caused by a stranger or act of God. On the other hand the **Act** of 1774 relieved him of liability if the fire started accidentally. There is no burden on the Defendant of disproving negligence, that the proof of negligence would be on the Plaintiff. If the **Act of 1774** did not apply there would be a burden of disproving negligence on the part of the Defendant, the Plaintiff being able to rely on the doctrine. It can be seen then that grounds 2, 4 and 5 can be answered by deciding whether the doctrine of **Res Ipsa Loquitur** applied or the **Act** of 1774.

There seems no doubt that the **Act** of 1774 did not apply. Its application stems from the fact that although it was originally an **Act** to control actions due to fire damage in London, it was applied throughout England. It therefore had some claim to be an act of general application. In the **Judicature Act** (Cap 34) of 1962, section 2 declared that the jurisdiction of the High Court was to be exercised subject to the constitution:-

a) in conformity with the written laws in force on 9th October 1962 including the laws applied by the act, or may hereafter be applied or enacted;

b) subject to such written laws and so far as the same do not extend or apply –

   (i) in conformity with the substance of the common law, the doctrines of equity and the statutes of general application in force in England on the 11th August 1902

   (ii) (not applicable.)

c) Provided that the said common law, doctrines of equity and statutes of general application shall be in force in Uganda only so far as the circumstances of Uganda permit, and subject to such qualifications as local circumstances may render necessary."

The argument presented by Mr. Mugisha concerned the existence of the **Act of 1774** as a statute of general application on 11th August 1902. The submission of Mr. Tumusingize concerned the inapplicability of the **Act of 1774**; he said that the common law had greater sense in Uganda than the Act of 1774.

But these arguments are with respect beside the point. The reference to Acts of general applicability was deleted from the 1967 **Judicature Act.** Such acts consequently no longer apply to Uganda. Section 3(2) of Act 11 of 1967 provides for the supremacy of the Constitution and continues that the jurisdiction of the High Court shall be exercised:-

a) in conformity with the written law including any law in force immediately before the commencement of this act;

b) subject to any written law and in so far as the same does not extend or apply, and in conformity with,

   i. the common law and the doctrines of equity;

   ii. any established and current customs or usage; and

   iii. (matters of practice and procedure)

c) where no express law, or rule is applicable to any matter in issue before the High Court in conformity with the principles of justice, equity and good conscience;

(3) The applied law, the common law and the doctrines of equity shall be in force only in so far as the circumstances in Uganda and of its people permit and subject to such qualifications as the circumstances may render necessary.

The *"applied law"* refers to the laws applied in the Act (see Sec 47 of Act 11 of 1967 and the schedules). They follow on from the schedules to the Judicature Act of 1962. These are not the Acts of general application which later acts are not specified in the schedules of the **Judicature Act** of 1962. The reference to 11th August 1902 in the 1967 **Act** is that in section 47 and is related to amendments in scheduled **Acts** before that date. The conclusion can only be that the **Acts** of general application no longer have any place in the jurisdiction of the High Court, and that is perhaps as it should be.

On that basis then, the appellant's arguments fell to the ground as based on the **Act of 1774**, and the learned Judge turns out to have been right for not applying it, though he gave no particular reasons for not doing so. The Judge was right to rely on the doctrine of **Res Ipsa Loquitur**, and there is no place for the concept of the Appellant's liability being excluded if the fire arose accidentally. Presuming that the appellant was guilty of negligence, the burden would fall on it to show that it was not negligent, which would involve such notions as to whether any steps had been taken to prevent fire. It would in all probability necessitate the disclosure why the fire had occurred, or at least to show that it must have been accidental. It would also be a good defence if the fire had been caused by an external cause.

If follows that while the defences under the **Act of 1774** are not available to the Appellant, the latter can defend itself by showing that the fire did not originate on its premises or under its management. (Grounds 1 & 3).

Mr. Mugisha relied on a statement of principle according to **Charlesworth on Negligence** (see Ed p. 42), that the doctrine comes into play as summarized when:-

(1) on proof of the happening of an unexplained occurrence;

(2) when the occurrence is one which would not have happened in the ordinary course of things without negligence on the part of somebody other than the plaintiff: and

(3) the circumstances point to the negligence in question being that of the defendant rather than of any other person.

I would accept those principles if the fire originated on the Appellant's premises, then having in mind that these premises comprised a motor garage and repair shop. The learned Judge must be right to apply the doctrine as indicating a presumption that the occurrence was unexplained, that it pointed to negligence, and that negligence was that of the Appellant. Reviewing the defence evidence, it can be said to have studiously avoided any discovery of the place, cause or extent of the damage to the Appellant's premises. Of course, the Respondent could not tell from his premises what had occurred on the Appellant's premises.

The learned Judge weighed up the evidence, and concluded that the fire originated on the Appellant's side of the dividing wall and spread to the Respondent's side. He is criticized for that finding because of the contradictions in the evidence. There were some contradictory statements. It did appear that there might be two walls at one stage of the argument. But when one considers all the evidence and especially that of the independent witness Mr. David Bukenya (PW4) there was only one wall. The learned Judge was within his rights to hold that the fire originated on the Appellant's side, and was in that sense under its general management.

As far as damages are concerned I would not differ from the calculations of the learned Judge. As far as general damages are concerned I would have thought that great inconvenience had been proved. The sum awarded was modest. The special damage was particularized in the documentary evidence produced. Consequently I would dismiss the appeal with costs to the successful party.

JUDGMENT OF ODER, J.S.C.

I have had the benefit of reading the judgment of my brother Platt, J.S.C. in draft. I agree with him that the appeal should fail for the reasons he has given. I have nothing useful to add.

JUDGMENT OF MANYINDO, D.C.J.

I read the judgment of Platt, J.S.C. in draft. I agree with it and as Oder J.S.C. also agrees, the appeal is dismissed with costs to the Respondent.

1st July 1992