

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MASINDI
CIVIL SUIT NO. 07 OF 2014

1. BIRUNGI MARGARET

5 2. NAMANDE OLIVER NAKYEYUNE }PLAINTIFFS

3. BUSOBOZI AGILEO }

VERSUS

1.KUGUMISIRIZA PHENEKANSI }DEFENDANTS

2. KWESIGA GEOFFREY }

10

BEFORE: HIS LORDSHIP HON. MR. WILSON MASALU MUSENE

Judgment

The Plaintiffs Birungi Margaret, Namande Oliver Nakyeeyune and Busobozi Agileo sued the Defendants Kugumisiriza Phenekansi and Kwesiga Geoffrey
15 seeking for the following orders;

- a. A declaration that the 1st Defendant's driver negligently drove motor vehicle registration No. UAQ 294E Isuzu Juston thereby causing an accident that resulted into the death of Byamukama Henry & Irumba Bosco.
- 20 b. Special damages of UGX 9,756,000/=.
- c. General damages for loss of expectation of life and grief valued at UGX 400,000,000/=.
- d. Punitive/exemplary damages valued at UGX 50,000,000/=.
- e. Costs of the suit.
- 25 f. Interest at 35% p.a on (b), (c), (d) and (e) from the date of judgment till payment in full.
- g. Any other and further reliefs as this Honourable Court shall deem fit.

The Plaintiff's case is that on the 25th/01/2014 at 1:00pm at Kigona Trading Centre, Butema Parish, Buhanika Sub-County, Bugahya County, Hoima
30 District, while the deceased Byamukama Henry, Irumba Bosco and the 3rd Plaintiff Busobozi Agileo with their bicycles were lawfully keeping the left side of the road at the extreme end of the bus terminal, they were viciously

knocked and fatally injured by the 1st Defendant speeding motor vehicle Reg. No. UAQ 294E Isuzu Juston. The said 1st Defendant's vehicle at the time being driven by its authorized driver and son Mr. Kwesiga Geoffrey at a very high speed, veered off the road to the far left side, crossed the bus terminal, Pedestrian Walk-way ferociously and fatally knocked Byamukama Henry and Irumba Bosco who died on spot.

That the driver of the said motor vehicle Reg No. UAQ 294E Isuzu Juston, Mr. Kwesiga Geoffrey (the 2nd Defendant) at the material time the authorized driver and/or servant of the 1st Defendant was negligent in that he drove the said vehicle at a speed which was excessive in the circumstances, carelessly and/or recklessly without due care and attention to other road users and as a result, failed to observe the restricted speed in the township centre, keep his line of way or to stop, slow down, swerve or in any other way to manage or control the vehicle as to avoid the fatal accident.

At all material times the motor vehicle Reg No. UAQ 294E Isuzu Juston was the property of the 1st Defendant and at the time of the accident it was being driven, managed and controlled by a one Kwesiga Geoffrey in his capacity as an agent, son, servant, employee and/or authorized driver of the 1st Defendant and in the scope of his employment.

The Plaintiffs averred that the accident was caused by the negligence of the 1st Defendant's said servant/driver or agent, in addition to the dangerous mechanical condition of the vehicle and the defendants are liable.

The Defendants on the other hand stated that they were not at fault at all and denied being responsible for the said accident. Alternatively, and without prejudice to the foregoing, the defendants stated that the deceased were contributorily negligent as they continued to converse with the 3rd Plaintiff and negligently entered the main road without taking precaution and without keeping proper look out for the said motor vehicle.

Despite numerous service of hearing dates on the Defendants, they did not attend Court. Consequently the matter proceeded ex parte under **Order 9 Rule 20 (1) (a)** of the Civil Procedure Rules.

Issues framed for determination:

1. Whether the 1st Defendant is vicariously liable for the acts of the 2nd Defendant?

2. Whether the Defendants negligently caused the death of the late Byamukama Henry, Irumba Bosco and caused personal injury to the 3rd Plaintiff?

3. Whether the deceased Byamukama Henry, Irumba Bosco and the 3rd Plaintiff were contributorily negligent for the accident?

4. What remedies are available to the aggrieved parties?

Issue 1: Whether the 1st Defendant is vicariously liable for the acts of the 2nd Defendant?

Counsel for the Plaintiff submitted that the 1st Defendant was vicariously liable for the acts of the 2nd Defendant since he was the authorized driver and son of the 1st Defendant. That it was the testimony of PW3 that the 2nd Defendant Mr. Kwesiga Geoffrey at a very high speed, veered off the road to the far left side, crossed the bus terminal, pedestrian walk-way, ferociously and fatally knocked Byamukama Henry and Irumba Bosco who died on spot.

Counsel relied on the case of **Muwonge versus Attorney General [1967] E.A P.17** where it was held that; the liability of a master extends to all torts committed by his servant when purporting to act in the course of such business as he was authorized or held out as authorized to transact an account of his master. That it would remain the position even when the servant was acting deliberately, negligently, or criminally for his own benefit.

In the instant case the 2nd Defendant was driving a vehicle belonging to the 1st Defendant and he was driving under the authority and permission of the 1st Defendant which makes him vicariously liable for the 2nd Defendant's acts. The 1st Defendant is therefore liable for the acts of the 2nd Defendant who was operating as his agent. This issue is therefore resolved in the affirmative.

Issue 2: Whether the Defendants negligently caused the death of the late Byamukama Henry, Irumba Bosco and caused personal injury to the 3rd Plaintiff?

Counsel for the Plaintiff submitted that the driver to Motor Vehicle No. UQA 294E Isuzu Juston was negligent and the law imposes a duty on a person who drives a vehicle on a road to use reasonable care to avoid colliding with other road users. In the case of **F. J. Ijala versus corporation Energo Project (1988-1990) at P. 123, Justice C. Byamugisha**, as she then was held that a motor vehicle does not normally block others without some negligence on the part of the driver. And in this particular case, it was incumbent upon the defendant to

show either there was a probable cause on his part or the accident was due to the circumstances beyond his control.

5 Counsel for the Plaintiff added that PW4 stated that while the deceased Byamukama Henry, Irumba Bosco and himself while riding their bicycles were lawfully keeping the left side of the road they were viciously knocked and fatally injured by the 1st Defendant's speeding motor vehicle driven by the 2nd Defendant at a very high speed.

10 That PW4 added that he sustained serious injuries with a broken limb for which he was hospitalised at Butema Health Centre III and incurred a lot of expenditure and has also suffered general body weakness which has affected his performance at work. That the Police sketch map of the scene of the accident, the vehicle inspection report and the post mortem report indicate that the Defendants were liable. That the 2nd Defendant failed to brake or swerve having noted that he was over speeding while approaching a corner and trading centre/failure to drive at the recommended speed. That the said 15 motor vehicle was in a poor mechanical condition and unfit for road use.

In the instant case it was the evidence of PW4 that the 2nd Defendant was driving at a very high speed in a very busy place (trading centre) neglecting other road users while driving a vehicle in a poor mechanical condition. The 20 2nd Defendant did not even take care to avoid the deceased persons and thus leading to their fatal death. The 2nd Defendant was therefore driving negligently and forgot the duty of care he owed the other road users. This issue is also resolved in the affirmative.

25 **Issue 3: Whether the deceased Byamukama Henry, Irumba Bosco and the 3rd Plaintiff were contributorily negligent for the accident?**

Counsel for the Plaintiff submitted that the Defendants pleaded the defence of contributory negligence in their written statement of defence but failed to adduce any evidence to prove contributory negligence and thus the allegation of contributory negligence cannot hold. That as general, rule, the burden of 30 proof lies on the Defendant to prove that there was contributory negligence. In the case of **Wayuu & Another versus Sugar Corporation of Uganda and Another [1998] 11 KLR. 15**, where it was held that in the absence of evidence to prove this, the issue should be answered in the negative.

35 The Defendants were unable to support their allegation of contributory negligence and thus, this Court cannot operate on speculation. He who alleges must prove as per **Section 101, 102 and 103** of the Evidence Act. The

Defendants have failed to discharge this burden. This issue therefore resolved in the negative.

Issue 4: What remedies are available to the aggrieved parties?

5 The Plaintiffs prayed for special and general damages. The Plaintiffs prayed for special damages to a tune of UGX 9,756,000/= to cover burial expenses, cost of damaged bicycles, cassava, yams, potatoes, medical bills among others. Then general damages to a tune of UGX 400,000,000/=.

Special Damages:

10 The principle of law is that special damages must be specifically pleaded and proved, but that strictly proving does not mean that proof must always be documentary evidence. Special damages can also be proved by direct evidence; for example by evidence of a person who received or paid or testimonies of experts conversant with the matters. (See: *Gapco (U) Ltd versus A.S. Transporters (U) Ltd* CACA No. 18/2004 and *Haji Asuman Mutekanga versus Equator Growers (U) Ltd*, SCCA No.7/1995.

15 Section 10 of the Law Reform Act permits damages to be awarded for funeral expenses.

20 The Plaintiffs in this case specifically pleaded special damages however, did not avail any documentary evidence to support the expenses incurred such as receipts, nor did they adduce any oral evidence or expert evidence to support their claims. In the circumstances Court finds that the Plaintiffs did not discharge the burden placed upon them by the law and are not entitled to the special damages claimed of UGX 9,756,000/=.

25 General damages are damages which the law implies or presumes naturally flow or accrue from the wrongful act and may be recovered without proof of any amount. (See: *Traill versus Bowker*, (1947) 14 EACA 20 and *Patel and Amin* (1955) 11 EACA 1 post 258). General damages are the direct or probable consequences of the act complained of. Such consequences might be loss of use, loss of profit, physical inconvenience, mental distress, pain and suffering, as per *Kiryabwire J. In Assist (U) Ltd versus Italian Asphalt and Haulage Ltd & Another*, HCCS No. 1291 of 1999, unreported at page 35.

35 Counsel for the Plaintiff prayed for UGX 400,000,000/= as appropriate in the circumstances of the case as general damages. However, I find the same on a higher scale. Instead I reduce the same to a sum of UGX 250,000,000/= which I deem appropriate. I decline to award interest on

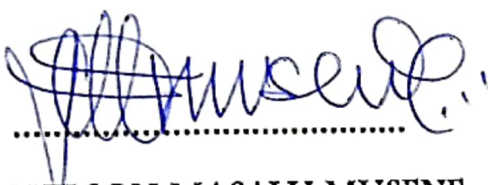
special damages, general damages, exemplary damages and costs. There is no justification given for the same and I use my discretion not award the same.

5 In the instant case the Plaintiffs having led sufficient evidence to prove their case and judgment is accordingly entered for the Plaintiffs in the following terms;

a. A declaration that the 1st Defendant's driver negligently drove motor vehicle Reg. No. UAQ 294E Isuzu Juston thereby causing an accident that resulted into the death of Byamukama Henry and Irumba Bosco.

10 b. General damages for loss of expectation of life and grief valued at UGX 250,000,000/=.

c. Costs of the suit.

 4th / Aug / 2020

15 WILSON MASALU MUSENE
JUDGE