

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION
CIVIL SUIT NO. 160 of 2014

- 1. NASIF MUJIB**
- 2. ABDUL HAMID MUJIB:.....PLAINTIFFS**
(Through Mujib Juma Kenyi, Attorney)

VERSUS

ATTORNEY GENERAL:.....DEFENDANT

BEFORE: HON. JUSTICE SSEKAANA MUSA

JUDGMENT

The plaintiffs claim against the defendant was for special and general damages or recovery of 84,300,850/= and interest arising from damage to their commercial building situate at Bulemezi Block 29 plot 27 Kalagala Road, Bombo Town Council when an accident involving a motor vehicle that belonged to the defendant and was driven by Lt. Mutai Chemondosi an Army Officer attached to Uganda People Defence Forces (UPDF), General headquarters, Bombo.

On the 13th day of January 2009 at about 9:25 pm the plaintiffs' lawful attorney received a call from one of the tenants in the building that an unregistered vehicle had swerved off the road and rammed into the plaintiffs' building and seriously damaged the same. The plaintiff's attorney reported the matter at Bombo Police station which established that the said motor vehicle belonged to the Ministry of Defence. The plaintiffs' were denied use of their building owing to the damage.

The defendant denied liability and contended that the said vehicle had no number plates and therefore never belonged to the government. Therefore, the government is not vicariously liable for the accident. The defendant was not responsible for any alleged damage to the building and any loss or inconvenience suffered by the plaintiffs'.

The matter delayed in the court system as the parties tried several time to have the same settled outside court. The court decided to proceed with the matter since the parties failed to agree on how much was to be paid in general damages.

The plaintiff was represented by *Counsel Jason Kiggundu* while the defendant was represented by *Counsel Adongo Imelda (SSA)*.

Issues for determination.

- 1. Whether the defendant is vicariously liable for the actions of its agent?*
- 2. What are the remedies available to the parties?*

Determination

Whether the defendant is vicariously liable for actions of its agent Lt Mutai Chemondosi?

The plaintiff's counsel submitted that it is not disputed that the motor vehicle registration unit CDR Chasis No. SX 16-0029558 Toyota Rav 4 white belonged to the Ministry of Defence and was being driven by Lt Mutai Chemondosi an army officer of Uganda People's Defence Forces General Headquarters.

The defendant admitted liability and made a proposal to settle the matter by paying a sum of 38,798,624/= a total compensation but the plaintiff refused the settlement due to the actual value of the compensation due to the plaintiffs.

Counsel further submitted that the defendant's conduct in offering to pay for the damage arising out of the negligence is an admission of liability for the negligent actions of its agent. It was their contention that the defendant is vicariously liable for the actions of their employee who was acting in the course of his employment.

The plaintiffs' prayed that court awards them special damages of 84,300,850/= as the cost of replacement of the damaged building. They also sought the value of reconstruction of the building being 249,005,716/=. They also sought 1,000,000/= per month as rental income which would now total to 160,000,000/= to date (2023).

The plaintiff's further sought a sum of 100,000,000/= as general damages arising from the negligence of the defendant's agent.

The defence counsel in the submissions never contested the damage to the building, but the only issue for contention was the quantum sought by the plaintiff being too high. The defence counsel contested the valuation report presented by the plaintiff witness since it was never presented by the expert who authored the same. They prayed that the court should ignore the same report as tendered in court.

The defence counsel submitted that the plaintiffs have failed to prove the special damages sought from court. In addition, counsel contended that the plaintiffs' failed to mitigate their loss and since 2009 they never tried to rectify the damage to the property. The defendant could not be blamed for this and they should not be awarded anything they are seeking from court.

Analysis

Special damages

The plaintiffs sought compensation from the court according to their pleadings filed in 2014 stood at 84,300,850/= which was categorized as special damages included expenses to preliminaries, demolitions, expense

on sub-structure, to expense on ground floor, cost of police report, cost of bill of Quantities, Administrative costs, total cost of labour being 30% of total BOQ and to cost of power of attorney.

What the plaintiffs listed as special damages was not actually special damages apart from one item (Cost of Police Report). The rest of the items listed therein cannot be categorized as such since they are speculative and not actual monies expended by the plaintiffs. The plaintiffs ought to have spent the said amounts in order to qualify to become special damages but to claim the anticipated claims/expenses as special damages is quite erroneous.

Special damages must be strictly proved meaning that evidence adduced on their proof must show particularity in accordance with the pleadings, and the claim must also be based upon precise calculation as to enable the defendant access facts which makes such calculation. Therefore, special damages are damages that are alleged to have been sustained in the circumstances of a particular wrong which must be specifically claimed and proved to be awardable.

The *ipse dixit* (that is, evidence of plaintiff) *simpliciter* led in proof special damages must be comprehensive and credible; and it must incorporate all the relevant conditions required in proof of special damages. Where various items are claimed under special damages, the plaintiff is entitled to be awarded any of the items which he could prove with sufficient evidence, even if he is not able to prove other or all the items. *See Lydia Mugambe v Kayita James & Another v HCCS No. 339 of 2020*

Special damages were defined in the case of *Mugabi John v Attorney General C.S No. 133 of 2002* as those damages that relate to past loss calculable at the date of trial and encompass past expenses and loss of earning which arise out of special circumstances of a particular case.

The law relating to special damages is settled. *W.M Kyambadde v MPIGI District Administration [1984] HCB* holding that the guiding principle is that special damages must be specifically pleaded and strictly proved.

The plaintiffs have totally failed to prove the alleged special damages and the same is disallowed.

General damages

The principle of assessment of damages for is generally in *restitutio in integrum*; that is the plaintiffs should be restored as far as money can do it, to the correct position they would have been had the injury or damage not occurred. The court has discretion as to the quantum of damages it would award in a claim of damages. The assessment does not depend on any legal rules, but the discretion of the court is however limited by usual caution or prudence and remoteness of damage when considering the award of damages.

In awarding general damages, the court would simply be guided by the opinion and judgment of a reasonable man in determining what sum of money will be reasonably awarded in the circumstances of the case.

General damages are losses which flow naturally from the defendant's act. Therefore, general damages are damages which the law implies and presumes to have accrued from the wrong complained of or as the immediate, direct and proximate result, or the necessary result of the wrong complained of.

The essence of damages is compensatory. It is neither to punish the defendant nor confer a windfall on the plaintiff. It is not also meant to punish the claimant and allow the defendant to go without repairing the actual loss caused to the claimant. *See Lydia Mugambe v Kayita James & Another HCCS No. 339 of 2020*

The plaintiffs as parties claiming damages had an onerous duty of taking reasonable steps to mitigate the expenditure and loss consequent upon the breach/damage and debars them from claiming any damages which were unnecessary or due to their negligence or dilatory conduct. The plaintiffs contend that the house was damaged in 2009 and since that time they have never made any effort of repairing the house in order to mitigate the loss. It would be unfair for them to claim rental income which they never pleaded in the plaint of 1,000,000/= per month since 2009 now amounting to 160,000,000/= This court would disallow such a claim in the circumstances of the case.

In the circumstances of this case, the plaintiffs' valuation report would not be relied upon to determine the actual amount to be spent since the author or the expert never appeared in court. This court would give a reasonable sum to restore the plaintiffs' to their original position before the accident or damage to the property. The plaintiffs are awarded a sum of 70,000,000/= as general damages. The plaintiffs are awarded interest on the general damages of 20% per annum from the date of judgment.

The plaintiff is awarded costs of the suit.

It is so ordered.

SSEKAANA MUSA

JUDGE

30th June 2023