

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT JINJA

CIVIL SUIT NO. 58 OF 2015

AUMA BETTY OKULLU PLAINTIFF

VERSUS

NATIONAL WATER & SEWERAGE CORPORATION DEFENDANT

JUDGMENT

BEFORE: LADY JUSTICE FARIDAH SHAMILAH BUKIRWA NTAMBI

The Plaintiff brought this suit under the provisions of the Law Reform (Miscellaneous Provisions) Act, Cap 79 against the defendant for loss of expectation of life, bereavement and loss of pecuniary support and dependence on her own behalf and on behalf of the deceased's dependant relatives.

Brief facts

The Plaintiff's case is that the deceased who was an employee of the Defendant Corporation died on 20/12/2013 while trying to unblock a public sewer in the service of the Corporation. That the Defendant Corporation owed the deceased a statutory duty to provide its employees with protective gear pursuant to the Occupational Safety Act which duty it breached by failing to avail the deceased with protective gear. That the cause of death of the Plaintiff's son was solely caused by the negligence of the Defendant Corporation.

The Defendant filed a Written Statement of Defence denying any negligence on its part and further stated that the deceased was employed on a temporary basis as a casual labourer attached to its sewerage department. That on the day of his death, he was on a frolic of his own and that without the knowledge of the Defendant, opted to enter a 15-metre-deep sewerage pit without taking precautionary measures contrary to the Defendant's policy. That the Defendant has always provided its employees with protective gear and that the deceased negligently omitted to adhere to the Defendant's safety measures. However, the Defendant admitted that although it tried to compensate the beneficiaries of the deceased's family under the Worker's Compensation Act, the compensation was rejected by the deceased's family.

Representation

Achiles Bwete of Cathage Advocates appeared for the Plaintiff while Isaac Walukagga of MMAKS Advocates appeared for the Defendant.

The parties filed a Joint Scheduling Memorandum on 28th April 2021 wherein they agreed to the the facts and issues for determination.

The agreed facts were that Bosco Atube (the deceased) died and that the deceased was employed by the Defendant.



Agreed Issues

1. Whether the Plaintiff has a cause of action against the Defendant under the Law Reform Miscellaneous Provisions Act?
2. Whether the deceased's death was caused by the negligence of the Defendant?
3. Whether the deceased has any dependants?
4. What remedies are available to the parties?

Burden of proof:

The burden of proof is in two broad categories that is the legal burden and the evidential burden. **Sections 101 and 102 of the Evidence Act Cap 6** rests the burden of proof on whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he or she asserts to prove that those facts exist or who would fail if no evidence is adduced at all. Therefore, the plaintiff bears the legal burden of proof to prove her case on the balance of probabilities. **Section 103 of the Evidence Act** on the other hand places the evidential burden on any party who alleges the existence of a set of facts to prove such facts. It provides thus;

The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

Issue 1

Whether the Plaintiff has a cause of action against the Defendant under the Law Reform Miscellaneous Provisions Act?

Arguments for the Plaintiff

Counsel for the Plaintiff cited the case of **Tororo Cement Co. Ltd vs Frokina International Ltd Civil Appeal No. 2 of 2002**, where Justice Order JSC (as he was then) defined a cause of action was to mean *"every fact which is material to be proved to enable the plaintiff to succeed or every fact which, if denied, the plaintiff must prove in order to obtain judgment."*

Counsel submitted further stating that for this peculiar case, the Plaintiff under paragraph 4 of the Plaint instituted this suit under the provisions of the Law Reform (Miscellaneous Provisions) Act, cap 79.

The Plaintiff's counsel in his submission cited **Section 5 of the Law Reform (Miscellaneous Provisions) Act** which provides for action maintainable when death is caused by negligence. It states that;

"if the death of any person is caused by any wrongful act, neglect or default of any person, and the act, neglect or default is such as would, if death had not ensued, have entitled the person injured by it maintain an action and recover damages in respect of it, the person who would have been liable if death had not ensued shall be liable if death had not ensued shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death was caused under such circumstances as amount in law to a felony"



It is counsel's submission that from the above provision the marginal note of Section 5 of the Act illuminates "action maintainable when death is caused by negligence."

Counsel further cited Section 6(1) of the Law Reforms (Miscellaneous Provisions) Act which provides;

"that every action brought under section 5 shall be for the benefit of the members of the family of the person whose death has been so caused, and shall be brought either by and in the name of the executor or administrator of the person deceased or by and in the name or names of all or any of the members (if more than one) of the family of the person deceased."

It was counsel's submission that paragraph 2 and 4 of the Plea illuminates that this suit was brought for the benefit of the members of the family of the person whose death was caused negligently by the Defendant. That this case was instituted by Auma Betty Okullu, the biological mother of the late Bosco Atube on behalf of the deceased's dependant relatives.

Plaintiff's Counsel prayed to this Honourable Court to find that the suit was instituted for the benefit of the members of the family of the late Atube Bosco.

Plaintiff's Counsel further submitted that had the deceased survived, he would have had a right of action against the Defendant in negligence since he was not availed with protective gear for such hazardous work which omission constituted negligence on the part of the Defendant which had a duty to provide the deceased with protective gear.

He cited the case of **Otim Solomon vs Nsereko Anthony & Another HCCS 275 OF 2014** in which Honourable Lady Justice H. Wolayo held that Section 5 of the Law Reform (Miscellaneous Provisions) Act provides for the survival of a right to sue in tort where the deceased would have been entitled to sue had he survived the tort.

Counsel prayed that this Honourable Court be pleased to find that a cause of action under the provisions of the Law Reform (Miscellaneous Provisions) Act has been established.

Arguments by the Defendant.

In response, Counsel for the Defendant also referred court to Section 5 of the Law Reform (Miscellaneous Provisions) Act and further stated that for a cause of action to accrue under the said law, the following test has to be met; there must be death of a human being; the death must have been occasioned by the Defendant; the Defendant must have been negligent, wrongful or in default by way of action.

He further submitted that such action, negligence or default must be such that would entitle the injured party to damages had the death not been occasioned. He argued that the death of the deceased was not occasioned by any negligence, wrongful act or default of the Defendant since the Defendant was not aware of the deceased's deployment at Factory Street where he died. He submitted that the deceased had not been officially deployed by the Defendant to work at Factory Street at the time he met his death and further, that the deceased had left his protective gear behind at Walukuba where had been officially deployed. That since the



deceased had left behind his protective gear at Walukuba, he was, exposed to dangerous gases while working in a cesspool pit at Factory Street that led to his death and that of his co-worker, the late Mugoda.

It was Counsel's submission that the Plaintiff failed to prove the allegations of negligence against the Defendant Corporation.

Resolution of issue 1.

The Plaintiff in this case proceeded under the Law Reform (Miscellaneous Provisions) Act and hence there is need to determine whether the Plaintiff has a cause of action against the Defendant.

Regarding the locus of the Plaintiff in bringing this suit, the Plaintiff in paragraph 2 of the Plaint states that she is the biological mother and the administrator of the estate of the late Bosco Atube and her Letters of Administration were attached as **PEX1**.

In order to prove there is a cause of action, the Plaintiff must demonstrate that the Plaintiff enjoyed a right; that the right has been violated; and that the Defendant is liable. If the three elements are present, a cause of action is disclosed and any defect or omission can be put right by amendment. **See Tororo Cement Co Ltd V Frokina International Ltd Civil Appeal No. 2/2001.**

Both counsel cited **Section 5 of the Law Reform (Miscellaneous Provisions) Act** which states that;

"if the death of any person is caused by any wrongful act, neglect or default of any person, and the act, neglect or default is such as would, if death had not ensued, have entitled the person injured by it maintain an action and recover damages in respect of it, the person who would have been liable if death had not ensued shall be liable if death had not ensued shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death was caused under such circumstances as amount in law to a felony"

Section 6(1) of the Law Reforms (Miscellaneous Provisions) Act provides that;

"that every action brought under section 5 shall be for the benefit of the members of the family of the person whose death has been so caused, and shall be brought either by and in the name of the executor or administrator of the person deceased or by and in the name or names of all or any of the members (if more than one) of the family of the person deceased."

In **Cooke vs Gull LR 8E. P 116** and in **Read vs Brown 22 QBD P.31**, a cause of action was defined as *every fact which is material to be proved to enable the plaintiff succeed or every fact which if denied, the plaintiff must prove in order to obtain judgment.*

According to the Plaintiff, the Plaintiff stated therein that she is the biological mother of the deceased Bosco Atube suing in her capacity on behalf of the deceased's dependant relatives. She also states in the Plaintiff that the late Atube Bosco was an employee of the Defendant Corporation at the time of his death and was in active service while he tried to unblock a public sewer in the service of the Defendant Corporation. It is also stated therein that the Defendant Corporation had a statutory duty to provide its employees with protective gear for



such hazardous work which duty was breached when the Defendant failed to avail the protective gear to the deceased. That the death of the Plaintiff's son was solely caused by the negligence of the Defendant Corporation and that as a mother, she suffered great loss when her son died since for several years, the deceased took care of his dependants who included a child of nine years.

Therefore, on the basis of the above averments in the Plaintiff, I find that the Plaintiff has sufficiently covered the essential facts which qualify the Plaintiff's claim as one that falls under the Law Reform (Miscellaneous Provisions) Act, Cap. 79. I am inclined to concur with the submissions of Counsel for the Plaintiff and the authorities as cited that there is a cause of action by the Plaintiff against the Defendant.

Issue 2.

Whether the deceased's death was caused by the negligence of the Defendant?

Evidence in court.

PW1, Odongo Hellen, did not take oath and for that reason her evidence has been disregarded by this court.

PW2, Oyella Agnes, a sister in law to the deceased, confirmed to court that the deceased died during working hours at a place called Bugembe Agalyawamu having been sent to work by the Defendant. She confirmed that the deceased had visited her at her home in the morning of the day that he died and that he was wearing a blue overall which was the uniform provided by the Defendant and had gloves on but that he was not wearing gumboots.

PW3, Okello Max, a cousin brother to the deceased who at the time of the death of the deceased was the LC3 Chairman of Walukomasi Division, told court during cross examination that the deceased at the time of his death had been deployed by the Defendant to work in the sewer. That he obtained this information from the Personnel of the Defendant Corporation. He further testified that the public sewer along Factory Street where the deceased was working and later died was a public sewer which belongs to the Defendant.

DW1, Evarest Odongtoo, the former Superintendent of Works at the Defendant Corporation on the other hand, denied any negligence on the part of the Defendant Corporation and stated that the deceased left his protective gear at Walukuba where he had been deployed to work and went to do private work of unblocking a sewer on Factory Street. He further confirmed to court that the deceased did not wear a nose mask which would have prevented him from inhaling the poisonous gases in the sewer. It was his evidence further, that he had been told by the other employees of the Defendant who had been deployed to work at Walukuba with both Atube Bosco and Mugoda (both deceased) that the deceased persons had been called privately to unblock sewer on Factory Street and had left their protective gear at Walukuba East Block 5 where he had deployed them to work.

Arguments for the Plaintiff



Plaintiff's counsel submitted that under Section 5 of the Law reform (Miscellaneous Provisions) Act and relying on the case of Otim Solomon vs Nsereko Anthony & anor where the Honourable Lady Justice H. Wolayo opined that:

"the plaintiff has a duty to prove any or all or some of the conduct described in section 5, ie wrongful act, neglect or default. Each category constitutes negligence as the caption to the section suggests (Action maintainable when death is caused by negligence)."

Counsel for the plaintiff also referred court to Sections 19 and 13(g) of the Occupational Safety and Health Act 2006. Specifically, Section 13(g) of the Occupational Safety and Health Act provides that;

"An employer must provide necessary adequate personal protective equipment as far as is reasonably practicable to prevent the risks of accidents or of adverse effects of health."

That the duty to provide protective gear to employees exists and that in the instant case, the Defendant Corporation had a statutory duty to provide protective gear which duty it breached by failing to provide the same to the deceased. He referred to the evidence adduced showing that the deceased had been sent to the hazardous cesspool without protective gear and also referred to a newspaper report marked **DEX3** by the then Jinja District Police Commander Apollo Kateeba who reported that the Police rescue team did not find the deceased persons with any communication equipment and that they were clearly not protected enough to do that kind of work.

Counsel also relied on **DEX2** which is a condolence message from the Defendant's General Manager at the Jinja branch stating that the evidence of DW1 contradicted the official position of the Defendant in DEX 2 which evidence was consistent with the testimonies of PW2 and PW3 who both told court that the deceased died trying to unblock the public sewer line in the service of the Defendant during working hours at a place called Agalyawamu.

Counsel referred to the evidence of DW2 as consisting of grave contradictions and inconsistencies which point to deliberate untruthfulness.

PW2 during cross examination testified that the deceased had been sent to work by the Defendant on the day that he died. This testimony is consistent with the official condolence message of the Defendant marked as DEX2 which confirmed that the deceased died as he tried to unblock public sewer lines in the service of the Defendant Corporation.

He argued that although the Defendant Corporation sought to rely on its policy of occupational health and safety, the same was never attached to the Written Statement of Defence which meant that it never had any such policy.

It is Counsel's submission that this kind of work necessitated the use of gas masks or oxygen masks, communication equipment, sufficient light and ladders which were never provided to the deceased. That what the Defendant Corporation provided to the deceased was so insufficient which makes the Defendant liable in negligence.

Plaintiff's Counsel prayed that this Honourable Court be pleased to find that the Defendant negligently caused the death of the deceased.



Arguments for the Defendant

In response, counsel for the Defendant submitted stating that the Plaintiff had not proved the particulars of negligence against the Defendant as set out in paragraph 5(h) of the Plaintiff. He referred court to the case of **Interfreight Forwarders (U) Limited vs East African Development Bank S.C.C.A No. 32 of 1992** to support this submission.

It was Counsel's submission that while the Defendant had a duty to the deceased to provide him with protective gear, the deceased elected to leave his protective gear behind at Walukuba and instead went to do private work at Factory Street without the knowledge of the Defendant. As such, there was no negligence at all on the part of the Defendant.

Referring to DEX2 which is a condolence message dated 21st December 2013 and authored by the General Manager of the Defendant Corporation, counsel submitted that it is not disputed that the deceased persons were employed by the Defendant at the time of the accident. That what is contested is that they were not at the time of the accident deployed to work at the site at Factory street where they met their death. That the Defendant had provided the deceased persons with protective gear which they left behind at Walukuba including nose masks which had been provided by the Defendant and would have prevented him from inhaling the poisonous gases that caused their death.

Defendant's Counsel emphasized that the deceased was allocated work at Walukuba with all the protective gear and that after completing the day's work, the deceased left for private work at Factory Street leaving behind his protective gear. That the Defendant cannot be held liable for the deceased's actions and that in that regard, the obligation to provide protective gear was discharged by the Defendant.

That in such circumstances, the Defendant cannot be held liable in negligence for the death of the deceased.

Resolution of Issue 2

Negligence means careless or unreasonable conduct. Blacks Law Dictionary 11th 2019 defines negligence to mean *the failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation; any conduct that falls below the legal standard established to protect others against unreasonable risk of harm, except for conduct that is intentionally, wantonly or wilfully disregarding of other's rights.*

The tort of negligence is therefore complex and fluid because in determining liability in negligence, issues like duty of care, breach, causation and remoteness of damage are analysed in any given case.

Before the liability of a Defendant to pay damages for the tort of negligence can be established, it must be proved that;

- a) The Defendant owed to the injured man a duty to exercise due care;
- b) The Defendant failed to exercise the due care and;
- c) The Defendant's failure was the cause of the injury or damage suffered by that man. (See **H.Kateralwire vs Paul Lwanga [1989-90] HCB 56**)



In the instant case, the Plaintiff has the burden to prove that the Defendant owed the deceased a duty which it failed to exercise leading to his death. The burden in an action for negligence is on the person who complains of the negligence. There must be proof of some duty owed by the Defendant's breach of that duty and consequent damage suffered by the Plaintiff.

It is not disputed that the deceased was an employee of the Defendant Corporation and as an employee, the Defendant Corporation owed a duty of care towards the deceased.

Section 2 of the Employment Act defines an employee as;

"any person who has entered into a contract of service or an apprenticeship contract, including, without limitation, any person who is employed by or for the government of Uganda, including the Uganda Public Service, a local authority or a parastatal organisation but excludes a member of the Uganda People's Defence Forces."

Section 13 (1) of the Occupational Safety and Health Act provides that;

"It is the responsibility of an employer—

(a) to take, as far as is reasonably practicable, all measures for the protection of his or her workers and the general public from the dangerous aspects of the employer's undertaking at his or her own cost;

(b) to ensure, as far as is reasonably practicable, that the working environment is kept free from any hazard due to pollution by—

(i) employing technical measures, applied to new plant or processes in design or installation, or added to existing plant or processes; or

(ii) employing supplementary organisational measures."

Subsection (2) provides that;

"Without prejudice to the generality of an employer's duty in subsection (1), the matters to which the duty extends shall include in particular-

(g) "the provision, where necessary, of adequate personal protective equipment to prevent, as far as is reasonably practicable, the risks of accidents or of adverse effects on health."

In the present case, the Defendant Corporation had a duty to ensure that the deceased had adequate protective gear while performing his duties at work. The employer is mandated to execute this duty by statute and under common law as submitted by counsel for the Plaintiff.

It is evident that the Defendant owed the deceased a duty of care considering that he was an employee of the Defendant Corporation. However, the question is whether the Defendant failed to exercise that duty.

From the evidence adduced, the deceased met PW2 who confirmed to this court that on the morning of his death, he was wearing a blue overall provided by the Defendant and also wore gloves but had no gumboots on. It has also been revealed in the evidence through PEX 3 that the deceased did not have any communication equipment and that he was clearly not protected enough to do that kind of work. So, it is not disputed that at the time of his death



the deceased was not wearing adequate or suitable protective gear for the kind of work that he was doing.

The law requires that a standard and degree of care should be taken in any circumstance by a reasonable and prudent person in like circumstances. Although the standard is uniform, the degree of care is not, it varies in different circumstances. The degree of care required varies directly with the risk involved. The greater the risk; the greater the care.

The deceased in this case was required to unblock a public sewer which required him to descend fifteen (15) metres deep into a cesspool pit. This required the deceased to have had protective gear in order to execute such hazardous and risky work.

DW1 confirmed that the deceased did not go with his nose mask to Factory street to unblock the sewer which to him, if the deceased had worn, would have prevented him from inhaling the poisonous gases.

Plaintiff's counsel submitted that this kind of work necessitated the use of gas masks or oxygen masks, communication equipment, sufficient light and ladders which were never provided by the Defendant and for that reason, he prayed that the Defendant be held liable for having been negligent.

The evidence adduced by the Defendant is that it provided the protective gear but the deceased chose to leave it at Walukuba and went to work privately at Factory Street. It is evident that the deceased wore a blue overall and gloves on the day that he died. DW1 stated that the deceased should have gone to Factory street with a nose mask to prevent him from inhaling the poisonous gases in the sewer which he did not. No evidence was led to prove that there was any other protective equipment that the Defendant Corporation provided to the deceased for instance communication equipment that could have been utilised in the event of an emergency or the nose masks DW1 refers to.

I will delve into the issue raised by the Defendant that at the time of the deceased's death at Factory Street, he had not been deployed by the Defendant to unblock the sewer at Factory Street and as such, the Defendant should not be held liable.

In the case of **Muwonge Vs. Attorney General [1967] EA 17 cited in Tusubira Robert Vs. Anguma Collins and New Uganda Securiko Services Ltd C.S 238 of 2012**, it was held that;

"An act may be done in the course of employment so as to make his master liable even though it is done contrary to the orders of the master, and even if the servant is acting deliberately, wantonly, negligently, or criminally, or for his own behalf, nevertheless if what he did is merely a manner of carrying out what he was employed to carry out, then his master is liable."

In the Supreme court case of **A.K.P.M. Lutaya Vs. Attorney General Civil Appeal No.10 of 2002**, it was held inter alia in determining whether the Government was vicariously liable for the actions of its soldiers that;

"It was immaterial if the manner in which they carried out their duties was improper or unauthorized, so long as it was merely a manner of carrying out their duties."



The evidence adduced in court through PEX2, the condolence message from the Defendant to the family of the deceased contains an admission by the Defendant Corporation that the public sewer that the deceased was working on where he met his death belonged to National Water and Sewerage Corporation.

An extract from the condolence message reads as;

".....the demise of our two colleagues who lost their lives suddenly in a man hole accident as they tried to unblock the public sewer lines in the service of the Corporation on the afternoon of Friday 21st December 2013 at Agaliawamu in Jinja Municipality....."

It is deduced from the condolence message that the sewer that the deceased was working on was indeed a public sewer and more importantly, that the deceased died in service of the Defendant Corporation.

I find it rather difficult to believe the evidence of DW1 who told Court that the General Manager who authored the condolence message should have consulted him to obtain accurate details on this particular deployment of the deceased. I find that this evidence is an afterthought by the Defendant Corporation in its failed attempt to avoid liability.

The Defendant did not lead any evidence to prove that the sewer in which the deceased died was privately owned.

From my analysis of the evidence adduced by both parties, it is clear to this court that the deceased was working for the Defendant Corporation at the time of his death. The Defendant owed the deceased a duty of care to ensure his safety while undertaking dangerous or risky operations like that of unblocking a manhole that was 15 metres deep at Factory Street where he met his death.

Lord Atkin in *Donoghue v Stevenson* [1932] AC 562 stated that;

"You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbor."

The third ingredient on negligence would be whether the death of the deceased was caused by the defendant's breach of the duty of care and not due to any other cause. It is an admitted fact that there was death of the deceased and proof by way of a Medical Certificate of Death was adduced as DEX1 which revealed that the cause of death was respiratory arrest.

Further the evidence of a newspaper article marked as DEX 3 clearly reported that the deceased and Noah Mugonda died after getting trapped while trying to unblock a sewerage line linking Jinja Industrial Area to the waste treatment plant. That they were pulled out of a 15 metres deep sewerage pit in Kazimungi village. The Jinja District Police Commander reported in that newspaper article blamed the Defendant for having failed to provide the deceased persons with protective gear and communication equipment.

It is therefore my finding that the Defendant breached its duty of care towards the deceased and because of that breach, the death of the deceased was occasioned. I agree with the submissions of Counsel for the Plaintiff that the Defendant is liable for the death of Bosco Atube, the deceased arising out of the negligent acts of the Defendant.



Issue 3

Whether the deceased had any dependants?

Counsel for the Plaintiff submitted that paragraph 11 of the Plaintiff highlighted the dependants of the deceased who include Auma Betty (the mother of the deceased), Opobo Marino (the deceased's father), Adoch Winnie (the deceased's daughter) and Amone Solomon, the deceased's brother. He submitted that the deceased had one child and several other dependants. That the deceased also paid school fees for some of his relatives. PW2 also confirmed that the deceased had dependants.

In response, Counsel for the Defendant submitted that while it is averred in the Plaintiff that the deceased had dependants, there is no evidence that was led by the Plaintiff to prove that any of the persons set out in the Plaintiff were related to the deceased.

That no birth certificates were adduced to prove that the deceased was a father. No payment slips were adduced to prove that the deceased ever made any payments for the alleged dependants and that no documentary evidence was ever adduced to prove that the deceased supported any dependants.

In rejoinder, the Plaintiff's Counsel referred to the Plaintiff, the witness statements and the evidence adduced in court to prove that the deceased had dependants.

Resolution

Section 2 (g) of the Succession (Amendment) Act 2022 defines a dependent relative to include;

"a parent, a brother or sister, niece or nephew, a grandparent or grandchild who on the date of the deceased's death was wholly dependent on the deceased for the provision of the ordinary necessities of life suitable to a person of his or her station."

In the case of **Uganda Electricity Board Vs. G. W. Musoke Civil Appeal No. 30 of 1993**, the Supreme court stated the true and proper purpose of the Law reform (Miscellaneous Provisions) Act as;

"It seems to me that the purpose of the Act was to provide a new cause of action which would enable a dependant of the deceased to claim compensation for the loss suffered as a result of his death. It is true that section 8 of the Act does not use the word "dependants", but "members of the family". In my view, however, the intention was to provide for members of the family who were dependants of the deceased and therefore who had suffered pecuniary loss as a result of his death. In each case the question to ask is what pecuniary loss the member of the family has suffered. He would claim to have suffered pecuniary loss if he had lost dependency on the deceased. Damages were not generally awarded as solatium for the bereavement of the family."

The foregoing, in my opinion, suggests that it is not enough to be in the stated relationship to the deceased. The person claiming to be a dependant relative must, in addition, prove his or her dependence to the deceased wholly or substantially on the date of the deceased's death.



The Plaintiff and the other dependants in this instant case were required to prove that they were actual dependants to the deceased.

Evidence adduced shows that the deceased left behind a daughter Adoch Winnie who apparently is still in primary seven and still needs financial support. No birth certificate was ever adduced as stated by counsel for the defendant but then this evidence of a child was never contested during trial. All the plaintiff's witnesses testified to the child of the deceased having left a child.

In addition, it was stated in the witness statement of PW2 that the deceased was paying school fees for some of his relatives who have now dropped out of school due to his death. No evidence was adduced to support this assertion and neither were those dependants listed for review by this court.

Further to the above, it was stated that the dependant relatives including the Plaintiff are in unbearable conditions due to the loss of support from Atube Bosco. The Plaintiff in this case is the biological mother of the deceased. Among the dependants listed by the Plaintiff are the parents of the deceased that is Auma Betty (mother) and Opobo Marino the father.

It is understandable that the deceased catered for his elderly parents who at the time of the deceased's death were above the age of 70 years. It would be unreasonable to inquire about the payments the deceased made in respect of his parents since these are likely to be numerous and it would be difficult for anyone to account for the money spent on one's elderly parents. However, PW1, the sister to the plaintiff, PW2 sister in law to the deceased and Amone Solomon who is a brother to the deceased would have to prove dependency which has not been provided.

It is therefore my finding that the deceased left dependants including the daughter Winnie Adoch, Auma Betty (Mother), and Opobo Marino (Father).

Issue 4

What remedies are available to the parties?

Arguments by the Plaintiff's counsel

While referring to several cases, Plaintiff's counsel submitted that the pecuniary loss and loss of financial support from the late Atube Bosco had been established and that the dependant relatives of the deceased are entitled to damages for loss of pecuniary support.

Referring to the case of **Otim Solomon vs Nsereko Anthony and Anor C.S.No. 275 of 2014**, it was stated that this Honourable Court observed that the life expectancy in Uganda is sixty years. The deceased in the present case died at 29 years old. It therefore follows that he could have lived for another 31 years had it not been for the negligence of the Defendant Corporation. It was established in the evidence of PW3 that the deceased was of good character, was very hardworking, experienced and had a bright future in the Corporation which view was also expressed by the General Manager of the Defendant in DEX2. This evidence is an indication that had the deceased lived for another 31 years, he would have



risen through the ranks in the Defendant Corporation due to his performance and good character.

He cited the case of **Odong Cypriano vs Attorney General C.S No.15 of 2006** in which Justice Remmy Kasule (as he was then) held that;

"the compensation is not being given to the person injured, for that person is dead. Thus damages which would be proper for a disabling injury tend to be greater than those for deprivation of life"

Referring to the case of **Isaac Mawanda & 3 others (suing through their Next Friend Nakito Mary (Grand mother) vs Tugumisirize Abel & New Uganda Securiko Ltd C.S 104 of 2017**, Justice Sekaana Musa on the 30th June 2021 awarded UGX 180,000,000 for a deceased who had 28 more years to live. In the instant case the deceased had 31 more years to live.

Counsel prayed that the court awards general damages to compensate for the damage and pecuniary loss of a father and a son would be just.

Arguments by the Defendant.

In reply, counsel for the Defendant stated that the test for award of general damages for loss of dependency was set out in the case of **Josephine Etiang vs Attorney Genral HCCS No. 86 of 2002** as follows;

"On the issue of general damages, it is now settled that in assessing general damages for loss of dependency, the starting point is the loss of earnings of the deceased out of which is to be assessed the pecuniary benefits accruing to the plaintiffs to provide the data which in turn is calculated as an annual sum called the multiplicand. The court has to determine the appropriate multiplier. This is based on the number of years the dependency would have lasted. In arriving at this both the ages of the plaintiff and the period of the deceased could probably have lived had his life not been prematurely terminated have to be taken into account. The total lost benefits accruing to the plaintiff would therefore be the award of the multiplicand and the multiplier."

Counsel for the Defendant submitted in relation to the above that none of the Plaintiff's witnesses had testified to the deceased's salary. That there was no evidence to demonstrate any dependency on the late Atube by the alleged dependants and there is no basis for court to make any award for loss of dependency.

He further submitted that it is trite law that special damages must be specifically pleaded and strictly proved. That the damages for loss of dependency are special damages that must be strictly proved which the Plaintiff's witnesses failed to prove for the award of Ugx 2,350,000.



Resolution

Special damages.

According to the Plaintiff, the Plaintiff prays for special damages, general damages for loss of expectation of life of the late Atube Bosco, general damages for bereavement, general damages for loss of financial support and dependency, interest and costs of the suit.

On special damages, the Plaintiff pleaded in the Plaintiff to have spent UGX. 2,350,000 for grave construction, transport of mourners, water, food and death announcements. However, the Plaintiff has not provided any receipts as proof for that expenditure.

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 earnings which arise out of special circumstances of a particular case.

I agree with counsel for the Defendant that special damages must be specifically pleaded and strictly proved. The Plaintiff in this case has not attached receipts to prove the expenses incurred. However, in the case of **Kyambadde v. Mpigi District Administration [1983] HCB 44**, court held that failure to attach expenses is excusable because at the time of bereavement, it may not be possible to attend to details such as asking for receipts.

I, therefore, grant special damages amounting to UGX. 2,350,000 to compensate for the loss suffered by the family in the preparation of the deceased's burial.

General damages

The Plaintiff has specifically prayed for general damages in different categories including general damages for loss of expectation of life of the late Atube Bosco, general damages for bereavement and general damages for loss of financial support and dependency.

The damages to be awarded to the dependants under the Law Reform Miscellaneous Provisions Act must take into account any pecuniary benefit accruing to the dependants in consequence of the death of the deceased. The general principle is that the pecuniary loss can be ascertained only by balancing on the one hand, the loss to the claimants of the future pecuniary benefit and on the other hand any pecuniary advantage which from whatever source comes to them by reason of the death, that is, the balance of loss and gain to a dependant by the death, must be ascertained. See **Davies v Powell D.A Collieries Ltd [1942] AC 601**.

In the case of **Odong Cypriano vs Attorney General (Civil suit No. 15 of 20060 UGHC 55**, Justice Remmy Kasule observed that;

"The test is not whether the deceased had the capacity or ability to appreciate that his future life on earth would bring happiness. The test is not subjective and the right sum to award depends on an objective estimate of the kind of future on earth the victim may have enjoyed. No regard must be had to financial losses or gains during the period of which the victim has been deprived. The damages are in respect of loss of life, not loss of future pecuniary prospects."



The principal function of awarding damages for loss of expectation of life is to provide an indirect way to award damages for bereavement particularly in the Ugandan Context because under common law, no claim for solitude or bereavement could be entertained: **See Uganda Electricity Board vs. G.W. Musoke (1997) HCB 23** – a Uganda Supreme Court decision.

The deceased in this case was 29 years old thus was expected to live for 31 more years had it not been for the Defendant's negligence. At the time of his death, the deceased was working with the Defendant Corporation and had exhibited hard work. He was earning a salary which according to the pleadings amounted to Ugx 300,000 and he supported his daughter and elderly parents.

Plaintiff's Counsel relying on the case of **Isaac Mawanda & 3 others (suing through their Next Friend Nakito Mary (Grand mother) vs Tugumisirize Abel & New Uganda Securiko Ltd (supra)**, wherein the plaintiffs were awarded Ugx. 180,000,000 prayed to this court to award the UGX. 250,000,000 as compensation in damages.

However, I find the amount prayed for to be on the high side considering that in the present case, the deceased had one daughter and two elderly parents as the only dependants compared to the above decided case where the deceased had 9 dependants. For that reason, I will award UGX. 120,000,000 (Two hundred and fifty million shillings) to cater for the general damages incurred due to the death of the deceased.

Interest

I award interest at the rate at court rate on the damages awarded from the date of judgment until payment in full and costs of the suit are awarded to the Plaintiff.

It is hereby ordered that;

1. The Plaintiff is awarded special damages of UGX 2,350,000 (Two million three hundred and fifty thousand shillings) with interest at the rate of 15% from the date of filing this suit until payment in full.
2. The Plaintiff is awarded general damages of UGX 120,000,000 (One hundred and twenty million shillings.)
3. The Defendant shall pay the costs of the suit.
4. Interest on general damages at court rate from the date of judgment until payment in full.
5. All payments to the Plaintiff by the Defendant shall be deposited in court in accordance with Section 7 of the Law Reform Miscellaneous Provisions Act, Cap 79.

I so order.



HON. LADY JUSTICE FARIDAH SHAMILAH BUKIRWA NTAMBI.
JUDGE.

Judgment delivered on 10th day of July, 2024.