

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CIVIL APPEAL NO. 210 OF 2018

(Arising from the High Court of Uganda Holden at Masindi)

5 (Arising from HCT-12-CV-0004 of 2013)

TUSINGWIRE BARAHANDIKA

APPELLANTS

For and on behalf of 3311 others

10

VERSUS

1. ATTORNEY GENERAL

2. KIBAALE DISTRICT LOCAL GOVERNMENT ::::: RESPONDENTS

CORAM: HON. JUSTICE CATHERINE BAMUGEMEREIRE

15 HON. JUSTICE STEPHEN MUSOTA, JA

HON. JUSTICE MUZAMIRU MUTANGULA KIBEDI, JA

JUDGMENT OF HON. JUSTICE STEPHEN MUSOTA

Background

20 This appeal arises from a representative suit by Tusingwire Barahandika, in which he sued on his own behalf and on behalf of 3311 others for special and general damages for loss, suffering, inconveniences, harassment, torture, displacement, death and anguish caused by the respondent's agents.

On 14th January 2002, elections for District Chairpersons were held. In Kibaale District, one Ruremera Fred was declared the winner, beating two others including the incumbent, one Sebastian Sekitoleko. Violence erupted following the declaration of the election results. The violence pitted mainly between the Bakiga supporters and the Banyoro supporters. Unhappy that a Mukiga had defeated a Munyoro incumbent, those who supported the Munyoro incumbent that had lost the elections decided to wage a war against the Mukiga supporters. The violence which started on 15.02.2002 when the elections results were declared continued up to the end of 2003 and covered all sub-counties of Kibale with the appellants attacked in their homes by District officials, Gombolola Internal security organizations (GISO) officials, police, central government officials and members of Bunyoro-Mubende Committee headed by the late Kazairwe.

As a result of the violent attacks, houses belonging to the appellants were burnt, goats, cows, pigs were slaughtered; churches or Itambiros were destroyed, plantations such as trees and crops were cut down and people injured. In committing the atrocities, the government officials were using government vehicles Reg No. LG 0039-19 and Toyota Reg. No. LG 0038-19. The learned trial Judge found that the respondent's officials committed the atrocities and caused loss to the appellants but held that the respondents were not vicariously liable for the actions.

The appellants were dissatisfied with the decision of the learned trial Judge and filed this appeal on the following grounds;

- 5 1. The learned trial Judge erred in law and fact, in that he failed to consider the violation of the appellants' constitutional rights and the role of the State in protecting the same, and thereby wrongly dismissed the appellant's suit.
- 10 2. The learned trial Judge erred in law and fact, in that he failed to properly address the principle of vicarious liability and wrongly held that the respondents were not liable for acts perpetrated by their employees.
- 20 3. The learned trial Judge erred in law and fact in that he failed to properly and exhaustively evaluate the evidence and wrongly dismissed the appellant's suit.

Representation

- 15 At the hearing of the appeal, Mr. Henry Rwaganika appeared for the appellant while the Respondent was represented by Kukunda Claire, a State Attorney.

Appellant's submissions

Counsel for the Appellant submitted that the acts of the security officers were done in the course of their employment and as such the respondents should have been found to be vicariously liable for their actions. That there was overwhelming evidence that the appellants were driven out of their homes by the violence of the perpetrators and their property destroyed by unknown persons with government

agents taking part in the violence. The appellants cried out to the security to protect them from violence but the agencies including District Intelligence Officers advised them to arm themselves with weapons such as pangas, spears, bows and arrows and fight back
5 the attackers.

Counsel relied on the decision in **A. K. P. M Lutaaya Vs Attorney General S.C.C.A No. 10 of 2002** in which the Supreme Court held that the Attorney General was vicariously liable for the acts of the soldiers committed when they entered the appellant's tree plantation
10 and destroyed it for firewood. Counsel argued that this finding was based on the fact that it was the duty of the government to provide firewood for the soldiers to prepare their meals.

Counsel submitted that security organizations including the police and the Local Defence Unit (LDU) are enjoined by Article 221 of the
15 Constitution to observe human rights, which duty they failed to fulfill. Counsel argued that the learned trial Judge ought to have determined whether the respondents are liable for destruction of property, harassment and the killings complained of by the appellants. The Resident District Commissioner (RDC) and his
20 District Security Operations allowed the respondent's agents together with members of Bunyoro-Mubende Committee to wage violence against the appellants for close to 2 years. That the RDC and his district security and national security apparatus in the district not only failed to investigate, apprehend, imprison and prosecute the

culprits but also failed to adduce any single piece of evidence to that effect.

Counsel submitted that when the president visited the district in April 2002, 2 months after the violent attacks broke out, the 5 president promised among other things, that government was going to pay compensation to the appellants which compensation has not been effected.

Respondent's submissions

Counsel submitted that the police tried its best to keep law and order 10 amidst the volatile situation when extra policemen were sent to patrol the area with the police chief camping in the area. Counsel argued that the principle of vicarious liability was laid down in the case of **Muwonge Vs Attorney General of Uganda [1967] EA 17 (CA)** where **Newbold P.** stated that the principles of law governing the liability of 15 the Attorney General in respect of the acts of a member of the police force are precisely the same as those relating to the position of master's liability for the acts of a servant. It was further held that a master is liable for the acts of his servants committed within the course of his employment.

20 Counsel argued that where evidence points to a scenario where the employee was not authorized to commit such actions in the course of his employment, the employee will be found to have been on a frolic of his own and the employer would not be held liable. The perpetrators of the violence, although government employees being 25 DISO and GISO, were on a frolic of their own when they committed

those atrocities. The question for Court to resolve was whether the acts of killing, maiming, destroying property and evicting inhabitants from their homes were part of a government policy. That the learned trial Judge properly found that perpetrators of the violence were on 5 a frolic of their own.

Counsel further submitted that the appellant's suit was time barred because all the actions complained of were torts and under Section 3 (1) of the **Civil Procedure and Limitation (Miscellaneous Provisions) Act Cap 72**, an action in tort cannot be brought against 10 the Government more than two years after the date the cause of action arose. In this case, the cause of action arose in 2001 and the suit was filed in July 2005, four whole years after.

Consideration of the appeal

I have carefully studied the court record, considered the submissions 15 of counsel for both the Appellants and the Respondents, the law applicable and the authorities cited in the determination of this appeal.

This is a first appeal and the principles on first appeal are as follows:

On a first appeal, the law enjoins this court to review and re-evaluate 20 the evidence as a whole, closely scrutinize it, draw its own inferences, and come to its conclusion on the matter. This duty is recognized in **Rule 30 (1) (a)** of the Rules of this Court. It provides that;

30. Power to reappraise evidence and to take additional evidence.

- (1) *On any appeal from a decision of the High Court acting in the exercise of its original jurisdiction, the court may—*
- (a) *reappraise the evidence and draw inferences of fact; and*
- (b) *in its discretion, for sufficient reason, take additional evidence or direct that additional evidence be taken by the trial court or by a commissioner.*

The cases of **Pandya v R [1957] EA 336** and **Kifamunte Henry v Uganda SCCA No. 10 of 1997** have also succinctly re-stated this principle. I will apply those principles herein. I will resolve grounds 1 and 2 together and lastly ground 3.

Grounds 1 and 2

Grounds 1 and 2 of Appeal fault the learned trial Judge for having found that violence and killings were done to the complainants but found that the respondents cannot be vicariously held liable for the actions.

The learned trial Judge found that there was evidence on record that homes of people were burnt down, crops in stores and in gardens destroyed, plantations destroyed while domestic animals slaughtered and lives were lost. The learned trial Judge found at page 22 of the record of appeal that;

"I had no difficulty in finding that soon after the elections of the LCV Chairperson in Kibaale District, violent clashes erupted between the supporters of Ruremera and those of Sekitoleko. Both Bakiga and Banyoro were attacked, and the destruction

described earlier took place. The finding of court is that the violence continued even after the visit of the President. People were displaced from their homes, and some camped at Katikara..."

- 5 Vicarious liability is a situation in which one party is held partly responsible for the unlawful actions of a third party. It is also a legal doctrine where a person, himself blameless, is held liable for another person's conduct. The rule is justified by the latin maxim "*qui facit per alium facit per se*" meaning that he who acts through another acts himself. Under the doctrine of vicarious liability, an employer is liable for the acts of his/her employees done in the scope of that employee's duty.
- 10

Case law has held that for the doctrine of vicarious liability to apply, there must be three essential ingredients;

- 15
- *There must be a relationship of employer and employee;*
 - *The Tort must be committed by the employee;*
 - *In the course of business"*

In **Muwonge V. Attorney General [1967] 1 EA 17, Newbold P.** stated that;

- 20 "An act may be done in the course of a servant's 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 benefit never the less if what he did is merely a manner of

carrying out what he was employed to carryout then his master is liable.”

In the instant case, the issue for this court to resolve is whether the respondents were vicariously liable for the violent acts of the several
5 officials that carried out the violence.

The evidence of the appellants at the trial court particularly PW1, PW2 and PW6 was that one Bazara Lawrence, a GISO, chased people from their land, assaulted people, burnt their homes and chased them away. The accusations against Bazara Lawrence were that he
10 assaulted these people and other people, chased them from their homes, burnt their houses and food items, destroyed their plantations and slaughtered their animals. This was done both during the day and at night in the company of huge groups of violent people. Bazara Lawrence was always armed and sometimes was in
15 the uniform of Special Police Constables riding a motor cycle bearing government number plates and sometimes in a government registered pickup motor vehicle.

Asiimwe Vincent was the sub county chief of Nalwendo one of the hotbeds of the clashes. At the time of giving testimony, he was the
20 Assistant Chief Administrative Officer (CAO) of Kibaale District and was accused of assault and arson. Matiya Kasaija was the GISO of Nalwenyo sub-county and he is accused of taking part in the violent clashes with assault, arson and chasing people away from their homes. The evidence relied on by the learned trial Judge was that
25 against Bizara Lawrence, the GISO of Kyanaisoke, Asiimwe Vincent

and Matia Kasaija the sub-county chief and GISO respectively of Nalweyo Sub County having participated in the violent clashes in their respective areas.

- According to **The East African Cases on the Law of Tort by E. Veitch (1972 Edition)** at page 78, an employer is in general liable for the acts of his employees or agents while in the course of the employer's business or within the scope of employment. This liability arises whether the acts are for the benefit of the employer or for the benefit of the agent.
- 10 In deciding whether the employer is vicariously liable or not, the questions to be determined are: whether or not the employee or agent was acting within the scope of his employment; whether or not the employee or agent was going about the business of his employer at the time the damage was done to the plaintiff. When the employee or agent goes out to perform his or her purely private business, the employer will not be liable for any tort committed while the agent or employee was a frolic of his or her own.
- 15

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 **see Muwonge v. Attorney General. (*Supra*)**

The perpetrators of the violence, for instance Bazara Lawrence, was always armed and sometimes was in the uniform of Special Police Constables riding a motor cycle bearing government number plates and sometimes in a government registered pickup motor vehicle. The 5 role of a GISO (Gombolola Internal Security Officer) is to maintain security at the sub county level and such officers are entrusted with fire arms for the purpose of carrying out their roles.

In my view, the fact that the GISO officer was carrying a gun given to by government makes government liable since he was acting in 10 course of employment. More so, Bazara Lawrence was at times in uniform using a government vehicle and/or government motorcycle. Likewise, Asiimwe Vincent and Matia Kasaija, the sub-county chiefs of Nalwendo Sub County were found by the learned trial Judge to have participated in the violent clashes in their respective areas. A sub- 15 county chief has a role of carrying out general administration of the sub-county in conformity with Government regulations and policies.

This makes government liable for the acts carried out while on duty as security personnel. I reiterate that an act may be done in the 20 course of employment so as to make his master liable even though it is done contrary to the orders of the master. Grounds one and two are accordingly allowed.

Ground 3

Ground 3 faults the learned trial Judge for having dismissed the 25 appellant's suit. The respondents raised a preliminary objection at

the trial court that the suit was time barred, which was overruled by the trial Judge. The Respondents did not cross appeal against this decision and as such, we find no reason to interfere with the decision of the learned trial Judge on time limitation of the suit.

- 5 With regard to the remedies, the appellants prayed that court grants them an amount compensatory for the loss incurred 20 years ago. For instance, PW2 testified that he was attacked by a mob that burnt down two of his houses, a shop, two stores, a latrine and his bicycle. His 20 goats, 8 cows, chicken and 7 pigs were slaughtered and his
10 plantations and trees were destroyed by Bazara Lawrence and others. PW3 lost his wife and a 3 year old daughter in the violent attack of his home. The President visited the area in 2002 and promised compensation to the affected persons.

What remedies are available?

- 15 Article 50 (1) of the Constitution of the Republic of Uganda, 1995 allows a person whose rights have been violated to seek redress and such redress includes compensation. It provides;

*“(1) Any person who claims that a fundamental or other right or freedom guaranteed under this Constitution has been infringed or
20 threatened, is entitled to apply to a competent Court for redress which may include compensation.”*

The applicants in the present case have proved in issue one above that their fundamental rights and freedoms guaranteed under the Constitution were infringed by the respondents' agents and/or

employees and as such they are entitled to redress under article 50(1) of the Constitution including award of compensation. It is my considered opinion that the applicants are entitled to the following appropriate remedies:

5 **General damages**

The Appellants claim they lost cattle, goats, homes, shops, chicken amongst others household properties. The loss of lives in this case was a result of the respondent's agent's breach of statutory duty. Life is priceless and I am unable to cost each life lost or estimate the value
10 per head. I was not able to ascertain how many animals each applicant lost. The applicants must be awarded general damages sufficient to put them in the position that they would have been in had they not suffered the wrong.

I take cognizance of the fact that the plaint first filed in the High
15 Court had 154 plaintiffs and with leave of court, the plaint was amended and the plaintiffs increased to 3310. The defendants (now respondents), sought a months' adjournment to go to Kibaale and verify the list of the plaintiffs. After verification, the list of the plaintiffs was tendered in and marked Exh. P.1 with 3311
20 plaintiffs/appellants.

This court has considered an award of Ten Million (**Ug. Shs. 10,000,000/= Ten million**) to each of the Appellants as sufficient, appropriate and reasonable in general damages.

The appellants are also awarded costs of this appeal and the suit at the High Court.

I so order.

Dated this 23rd day of December 2022

5



Stephen Musota

JUSTICE OF APPEAL

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CIVIL APPEAL NO 210 OF 2018

CORAM:

HON. LADY JUSTICE CATHERINE BAMUGEMEREIRE, JA
HON. MR. JUSTICE STEPHEN MUSOTA, JA
HON. MR. JUSTICE MUZAMIRU KIBEEDI MUTANGULA, JA

TUSINGWIRE BARAHANDIKA

(On behalf of 3311 Ors) ::::::::::::::::::::: APPELLANT

VERSUS

1. ATTORNEY GENERAL
2. KIBAALE DISTRICT LOCAL::::::::::::::::::: RESPONDENT
GOVERNMENT

(Appeal from the decision of the High Court of Uganda at Masindi in HCCS No.004 of 2013).

JUDGMENT OF CATHERINE BAMUGEMEREIRE, JA

I have had the privilege of reading in draft the Judgment of my learned brother Stephen Musota, JA.

I agree with the finding in Grounds No. 1 and 2 that an act may be done in the course of employment so as to make the master liable even though it was done contrary to the orders of the master.

I concur with the finding on Ground No. 3 that there was no reason to interfere with the decision of the trial Judge on limitation of time.

Regarding the remedies, I concur with the award of 10,000,000/= (Ten Million Shillings) as general damages to each of the appellants to serve the interest of justice in this case.

Since my learned brother Muzamiru Kibeedi Mutangula, JA also agrees with the above conclusions, this appeal succeeds entirely with costs of this appeal and the court below awarded to the appellants.

Dated at Kampala this.....23rd day of.....December, 2022.



Catherine Bamugemereire
Justice of Appeal

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

(Coram: Catherine Bamugemereire, Stephen Musota & Muzamiru M. Kibeedi, JJA)

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TUSINGWIRE BARAHANDIKA ::::::::::::::: APPELLANTS
For and on behalf of 3311 others]

VERSUS

1. ATTORNEY GENERAL
2. KIBAALE DISTRICT LOCAL GOVERNMENT ::::::: RESPONDENTS

JUDGMENT OF MUZAMIRU MUTANGULA KIBEEDI, JA

I have had the advantage of reading in draft the Judgment prepared by my brother, Musota, JA. I agree and have nothing useful to add.

Dated at Kampala this 23rd day of December 2022



Muzamiru Mutangula Kibeedi
JUSTICE OF APPEAL