**Arima and others v Hiral**

**Division:** High Court of Uganda at Kampala; Court of Appeal at Kampala

**Date of judgment:** 19 July 1974

**Case Number:** 653/1973 (33/75); 59/1974 (42/75)

**Before:** Lubogo J, Spry Ag P, Law Ag V-P and Musoke JA

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*[1] Negligence – Petrol tanker – Driven on to soft verge in residential area – Negligence established –*

*High duty of care on transporters of dangerous substances.*

*[2] Negligence – Volenti non fit injuria – Whether passersby accepted risk of fire by approaching spilling petrol from tanker.*

*[3] Damages – Causation – Novus actus interveniens – Deliberate fire-raising – Not foreseeable –*

*Chain of causation broken.*

*[4] Nuisance – Constituents of – Act causing injury, danger or annoyance to public or obstruction of common rights – Negligence not required.*

**Editor’s Summary**

The plaintiffs sued the defendant in negligence and nuisance for damages suffered by fire.

The facts are set out in the judgment.

For the plaintiffs, it was contended that the defendant’s driver had been negligent in parking off the road, that the covers of the tanker had not been adequately fastened, that the doctrine of res ipsa loquitur applied and that a nuisance had been created.

For the defendant, it was contended that the driver had taken proper care, that the plaintiffs were the authors of their own misfortune in approaching a situation of danger, that the chain of causation was broken by the fire having been deliberately started and that there was no nuisance as risk could not have been foreseen.

**Held –**

(i) The driver was not negligent in driving the tanker off the road;

( ii) the fire was caused by the deliberate act of a person for whom the defendant was not responsible;

(iii) The chain of causation was broken by this independent act;

(iv) The plaintiffs were the authors of their own misfortune by deliberately exposing themselves to the danger of fire;

(v) There was no foreseeability of risk and accordingly no nuisance created.

Actions dismissed.

**Cases referred to Judgment:**

(1) *Re Polemis and Furness Withy*, [1921] 3 K.B. 560, [1921] All E.R. Rep. 40.

(2) *Donoghue v. Stevenson*, [1932] A.C. 562; [1932] All E.R. Rep. 1.

(3) *Haynes v. Harwood*, [1935] K.B. 146; [1934] All E.R. Rep. 103.

(4) *Lord v. Pacific Steam Navigation Co*., [1943] p. 32; [1943] 1 All E.R. 211.

(5) *Overseas Tankship v. Morts Dock* (*The Wagon Mound*), [1961] A.C. 388; [1961] 1 All E.R. 404.

(6) *Overseas Tankship v. Millers Steamship Co.* (*The Wagon Mound* (*No. 2*)), [1967] A.C. 617; [1966] 2

All E.R. 709.

(7) *Home Office v. Dorset Yacht Co*., [1970] A.C. 1004; [1970] 2 All E.R. 294.