**Bagologoza v National Parks Trustees**

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

**Date of judgment:** 18 February 1974

**Case Number:** 1026/1972 (67/74**)**

**Before:** Lubogo J

**Sourced by:** LawAfrica

*[1] Negligence – Master and servant – Safe place of work – Whether provided.*

**JUDGMENT**

**Lubogo J:** This is an action for general damages against the Uganda National Parks Trustees for injuries sustained by the plaintiff on 16 November 1970, when he was in the employment of the Uganda National

Parks Trustees at Mweya.

The issues to be decided are whether the defendants were negligent in not providing safety for the plaintiff and quantum of damages if it is found that the defendants were negligent.

The plaintiff said that in November 1970 he was employed by the defendants as a mechanic at Mweya at a monthly salary of Shs. 120/ – . He was provided with a house in the park by the defendants in what is known as a camp. In this camp there were several other houses occupied by the employees of the defendants. Within the camp there was a bath enclosure built in blocks but not fenced.

On 16 November 1970, at about 9 p.m. the plaintiff and his friend Lubega went to the bath enclosure to have a bath. After he had taken his bath and as he was dressing there was a power failure in the camp.

However, he went out of the bath enclosure and as he was walking away from it he was knocked down by what turned out to be a buffalo. He fell down unconscious. When he gained his consciousness he was in

Kilembe hospital. He had been gored in the thigh and right shoulder by the buffalo. He was transferred to

Fort Portal hospital and later to Mulago hospital. He was discharged on 7 July 1971. At the time of his discharge he was still feeling pain in the chest and could not turn his neck at will and had to use a surgical collar every two days. He had signs of libido as he had an injury in the spine and generally his health had been impaired by the injuries. In June 1972, he was again examined by a doctor.

Lubega said virtually the same thing as the plaintiff, but in addition he said that when the buffalo attacked his friend, he raised an alarm and many people came to the scene. Later a Landrover came and they were able to see two buffaloes by the aid of the lights of the Landrover. The buffaloes then walked away. He said further that the method used in driving away these animals is by training lights on them. In cross-examination Lubega admitted that although animals used to come to the camp they never hurt anybody. This was the first time such incident to happen in the camp for the whole year he had been there.

For the defence, Augustine Bendabule, Chief Game Park Warden of the Rwenzori National Park said that there is no fence around the quarters of the park employees. It was found expensive to fence them as the fence would be destroyed by the bigger animals no sooner, than they erect it or repair it. It was, therefore, necessary to have alternative device whereby the lives of employees would be safeguarded and that was to install electricity in the compound of the camp. Apart from this the employees were instructed to be in their houses by 6.30 p.m. with doors closed.

In cross-examination he admitted that the animals are known to go into these camps for food and peelings and can only be dangerous if they are infuriated or disturbed. As to fencing he said that fencing would hinder small animals from coming in, but as for big animals they would break in. He said that fencing the camps would make the parks look ugly and thus defeat the very purpose for which the parks were made. He said further that the house which the plaintiff occupied had a bathroom. The issue here is whether the defendants failed in their duty to provide a safe system of work for their employees. What is then a safe system of work? In *Colfar v. Coggins and Griffith* (*Liverpool*) *Ltd.*, [1945] 1 All E.R. 326, Viscount Simon, citing their Lordships judgment in *Wilsons and Clyde Coal Co. v. English*, said that a safe system of work is the practice and method adopted in carrying on the master’s business of which the master is presumed to be aware and the insufficiency of which he can guard against, but not isolated or day to day acts of the servant of which the master is not presumed to be aware and which he cannot guard against. Again in *Latimer v. A.E.C*., [1956] 2 All E.R. 449, Lord Porter said that excessive obligation should not be placed upon the master where his act of negligence is temporary. Where this happens it becomes a question of the degree of temporary inefficiency. In the cited case the masters’ appeal was allowed. Now I turn to the facts of this case. It has been tacitly conceded that there were some safety devices employed by the defendants to safeguard the lives of the employees of the park, or at least it was not canvassed by the plaintiff’s evidence that there were no such devices. This being so the matter becomes a question of degree of inefficiency in providing adequate safe system. It would be impossible, in the circumstances, to provide a 100 per cent proof system against the encroachment of the animals.

Fencing by itself could not provide that safeguard as the Park Warden pointed out in his evidence because bigger animals could easily break in; fencing, therefore, would put an excessive burden on the defendants in repair bills. Lubega, the plaintiff’s witness, said that the best method to drive away animals was to have lights. He said further that when the Landrover arrived at the scene with lights on the animals went away. It is, therefore, clear that the defendants devised the best possible means of driving away the animals by installing electricity in the compound of the camp. The failure of power on 16 November 1970, was an isolated instance. It has not been argued that the failure of power was a frequent occurrence and that the defendants were aware of it and failed to remedy the matter. On the contrary this method stood the test of time in that no one has ever been attacked and gored by animals. Furthermore, the plaintiff was provided with quarters in which there was a bathroom. He failed to avail himself of these facilities and preferred to have his bath in the compound with all the attendant risks. The doctrine of violent non fit injuria may well apply to him.

The defendants were not supposed to foresee every individual activity of the occupiers of the camp so that they guard against it. What the defendants were supposed to do was to cater for their employees generally in their usual activities in the camp and not for their individual propensities.

I am satisfied on evidence that the defendants were not negligent in their duty to the plaintiff and accordingly the suit would be dismissed with costs.

*Order accordingly.*

For the plaintiff:

*J Mulenga* (instructed by *Ibingira & Mulenga*, Kampala)

For the defendants:

*M Matovu* (Acting Solicitor-General